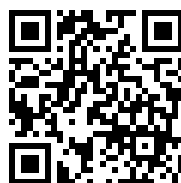

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23

Highways

Revised as of April 1, 1975



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Highways

Revised as of April 1, 1975



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AS OF APRIL 1, 1975**

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**as a Special Edition of
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Cite this Code CFR
thus: 23 CFR 1.1

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into Chapters which usually bear the name of the issuing agency. Each Chapter is further subdivided into Parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

Users of the Code should consult the cover of each volume to determine the revision date.

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Table III—Guide to Federal Register Finding Aids.	Table of Finding Aids and location in Federal Register Publications.
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FRED J. EMERY

April 1, 1975.

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1.37 Delegation of authority.

1.28 Application of regulations.

AUTHORITY: The provisions of this Part 1 issued under sec. 315, 72 Stat. 915; 23 U.S.C. 315, delegation of authority in 49 CFR 1.48(b) of the regulations of the Office of the Secretary, unless otherwise noted.

SOURCE: The provisions of this Part 1 appear at 25 F.R. 4162, May 11, 1960, as amended at 35 F.R. 18719, Dec. 10, 1970, unless otherwise noted.

§ 1.1 Purpose.

The purpose of the regulations in this part is to implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways.

§ 1.2 Definitions.

(a) Terms defined in 23 U.S.C. 101(a), shall have the same meaning where used in the regulations in this part, except as modified herein.

(b) The following terms where used in the regulations in this part shall have the following meaning:

¹ Retitled at 39 FR 10490, Mar. 20, 1974.

Administrator. The Federal Highway Administrator.

Advertising policy. The national policy relating to the regulation of outdoor advertising declared in title 23 U.S.C. 131.

Advertising standards. The "National Standards for Regulation by States of Outdoor Advertising Signs, Displays and Devices Adjacent to the National System of Interstate and Defense Highways" promulgated by the Secretary (Part 20 of this chapter).

Federal laws. The provisions of title 23, United States Code, and all other Federal laws, heretofore or hereafter enacted, relating to Federal aid for highways.

Latest available Federal census. The latest available Federal decennial census, except for the establishment of urban areas.

Project. An undertaking by a State highway department for highway construction, including preliminary engineering, acquisition of rights-of-way and actual construction, or for highway planning and research, or for any other work or activity to carry out the provisions of the Federal laws for the administration of Federal aid for highways.

Secondary road plan. A plan for administration of Federal aid for highways on the Federal-aid secondary highway system pursuant to 23 U.S.C. 117.

Secretary. The Secretary of Transportation.

State. Any State of the United States, the District of Columbia and Puerto Rico.

Urban area. An area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available published official Federal census, decennial or special, within boundaries to be fixed by a State highway department, subject to the approval of the Administrator.

[25 F.R. 4162, May 11, 1970, as amended at 35 F.R. 18719, Dec. 10, 1970]

§ 1.3 Federal-State cooperation; authority of State highway departments.

The Administrator shall cooperate with the States, through their respective State highway departments, in the construction of Federal-aid highways. Each State highway department, maintained in conformity with 23 U.S.C. 302, shall be authorized, by the laws of the State, to make final decisions for the State in all matters relating to, and to enter into,

on behalf of the State, all contracts and agreements for projects and to take such other actions on behalf of the State as may be necessary to comply with the Federal laws and the regulations in this part.

§ 1.4 Cooperation of governmental instrumentalities.

The State highway department shall be responsible for any project to be undertaken with the cooperation of, or with funds provided by, any other governmental instrumentality.

§ 1.5 Information furnished by State highway departments.

At the request of the Administrator the State highway department shall furnish to him such information as the Administrator shall deem desirable in administering the Federal-aid highway program.

§ 1.7 Urban area boundaries.

Boundaries of an urban area shall be submitted by the State highway department and be approved by the Administrator prior to the inclusion in a program of any project wholly or partly in such area involving funds authorized for and limited to urban areas.

§ 1.8 Programs of proposed projects.

Each State highway department shall prepare and submit to the Administrator, for his approval, detailed programs of proposed projects in such form and supported by such information as the Administrator may require. The Administrator shall not authorize any State to proceed with any project, or part thereof, until the program which includes such project has been approved.

§ 1.9 Limitation on Federal participation.

(a) Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in this title, and policies and procedures prescribed by the Administrator. Federal funds shall not be paid on account of any cost incurred prior to authorization by the Administrator to the State highway department to proceed with the project or part thereof involving such cost.

(b) Notwithstanding the provisions of paragraph (a) of this section the Administrator may, upon the request of a State highway department, approve the

participation of Federal-aid funds in a previously incurred cost if he finds:

(1) That his approval will not adversely affect the public,

(2) That the State highway department has acted in good faith, and that there has been no willful violation of Federal requirements,

(3) That there has been substantial compliance with all other requirements prescribed by the Administrator, and full compliance with requirements mandated by Federal statute,

(4) That the cost to the United States will not be in excess of the cost which it would have incurred had there been full compliance, and

(5) That the quality of work undertaken has not been impaired.

(c) Any request submitted under paragraph (b) of this section shall be accompanied by a detailed description of the relevant circumstances and facts, and shall explain the necessity for incurring the costs in question.

(23 U.S.C. 315, delegations of authority in, 49 CFR 1.48(b)) [38 FR 18368, July 10, 1973]

§ 1.11 Engineering services.

(a) *Federal participation.* Costs of engineering services performed by the State highway department or any instrumentality or entity referred to in paragraphs (b) and (c) of this section may be eligible for Federal participation only to the extent that such costs are directly attributable and properly allocable to specific projects. Expenditures for the establishment, maintenance, general administration, supervision, and other overhead of the State highway department, or other instrumentality or entity referred to in paragraphs (b) and (c) of this section shall not be eligible for Federal participation.

(b) *Governmental engineering organizations.* The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of other governmental instrumentalities for making surveys, preparing plans, specifications and estimates, and for supervising the construction of any project.

(c) *Railroad and utility engineering organizations.* The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of the affected railroad companies for railway-highway crossing projects and

of the affected utility companies for projects involving utility installations.

(d) *Private engineering organizations.* Private engineering organizations may be utilized on projects in accordance with requirements prescribed by the Administrator.

(e) *Responsibility of the State highway department.* The State highway department is not relieved of its responsibilities under Federal law and the regulations in this part in the event it utilizes the services of any engineering organization under paragraphs (b), (c) or (d) of this section.

§ 1.12 Authorizations to proceed with projects.

No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for contract, prior to authorization thereof by the Administrator.

§ 1.23 Rights-of-way.

(a) *Interest to be acquired.* The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project.

(b) *Use for highway purposes.* Except as provided under paragraph (c) of this section, all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State highway department shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes and (3) informational sites established and maintained in accordance with § 1.135 of the regulations in this part.

(c) *Other use or occupancy.* Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the

highway or interfere with the free and safe flow of traffic thereon.

§ 1.25 Railway-highway crossing projects.

(a) *Requirements for agreements or orders.* Before a project for the elimination of hazards at a railway-highway crossing shall be approved for construction with the aid of Federal funds, irrespective of the Federal share of the cost of such construction, either (1) an agreement shall have been entered into between the State highway department and the railroad concerned; or (2) an order authorizing the project shall have been issued by the State public utility commission or other agency or official having comparable powers. Such agreement or order shall contain provisions specifying responsibility for and pertinent details concerning construction, maintenance, and railroad contributions relating to the project, which, subject to 23 United States Code, section 130, and other applicable Federal law, conform to, and are not inconsistent with, the policies, classifications of projects and procedures prescribed by the Administrator. In extraordinary cases, where the Administrator finds that the circumstances are such that requiring such agreement or order would not be in the best interests of the public, projects may be approved for construction with the aid of Federal funds without requiring such agreement or order prior to such approval, provided provisions satisfactory to the Administrator have been made with respect to construction, maintenance and railroad contributions relating to the project.

(b) *Applicability of State laws.* State laws pursuant to which contributions are imposed upon railroads for the elimination of hazards at railway-highway crossings shall be held not to apply to Federal-aid projects.

§ 1.27 Maintenance.

The responsibility imposed upon the State highway department, pursuant to 23 U.S.C. 116, for the maintenance of projects shall be carried out in accordance with policies and procedures issued by the Administrator. The State highway department may provide for such maintenance by formal agreement with any adequately equipped county, municipality or other governmental instrumentality, but such agreement shall not

relieve the State highway department of its responsibility for such maintenance.

§ 1.28 Diversion of highway revenues.

(a) *Reduction in apportionment.* If the Secretary shall find that any State has diverted funds contrary to 23 U.S.C. 126, he shall take such action as he may deem necessary to comply with said provision of law by reducing the first Federal-aid apportionment of primary, secondary and urban funds made to the State after the date of such finding. In any such reduction, each of these funds shall be reduced in the same proportion.

(b) *Furnishing of information.* The Administrator may require any State to submit to him such information as he may deem necessary to assist the Secretary in carrying out the provisions of 23 U.S.C. 126 and paragraph (a) of this section.

§ 1.29 Vehicle weight and width limitation.

When requested by the Administrator, each State shall certify to the Administrator, with such pertinent information as he may require, whether or not its laws and regulations conflict with the limitations of 23 U.S.C. 127 as to weight and width of vehicles which may lawfully use the Interstate System within the boundaries of that State.

§ 1.31 Payments.

States may submit requests for payments of Federal funds claimed to be due on account of a project. Such requests shall be in the form of vouchers as prescribed by the Administrator, and shall be certified and accompanied with such supporting data as the Administrator may require. Such vouchers may be submitted from time to time as the work progresses and shall be submitted promptly after completion of the project to which the voucher pertains.

§ 1.32 Issuance of directives.

(a) The Administrator shall promulgate and require the observance of policies and procedures, and may take other action as he deems appropriate or necessary for carrying out the provisions and purposes of Federal laws, the policies of the Federal Highway Administration, and the regulations of this part.

(b) The Administrator or his delegated representative, as appropriate, is authorized to issue the following type of directives:

(1) Federal Highway Administration Regulations are issued by the Administrator or his delegate, as necessary, to implement and carry out the provisions of title 23, United States Code, relating to the administration of Federal aid for highways, direct Federal programs and State and community safety programs; and title 49, United States Code, relating to motor carrier safety; and other applicable laws and programs under his jurisdiction.

(2) Notices are temporary issuances transmitting one-time or short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(3) Orders are directives limited in volume and contain permanent or long-lasting policy, instructions, and procedures. FHWA Orders are to be used primarily as internal FHWA directives.

(4) Joint Interagency Orders and Notices are used by FHWA and the National Highway Traffic Safety Administration (NHTSA) to issue joint policies, procedures, and information pertaining to the joint administration of the State and Community Highway Safety Program. Where necessary, other joint directives may be issued with other modal administrations within the Department of Transportation.

(5) Manuals are generally designed for use in issuing permanent or long-lasting detailed policy and procedure. Some of the major manuals recognized by the FHWA Directives System follow:

(i) The Federal-Aid Highway Program Manual has been established to assemble and organize program material of the type previously contained in the Policy and Procedure and Instructional Memoranda, which will continue in effect until specifically revoked or published in the new manual. Regulatory material is printed in italics in the manual and also appears in this Code. Nonregulatory material is printed in delegate type.

(ii) The Administrative Manual covers all internal FHWA administrative support functions.

(iii) The Highway Planning Program Manual covers the methods and procedures necessary to conduct the highway planning functions.

(iv) The Research and Development Manual series entitled, "The Federally Coordinated Program of Research and Development in Highway Transporta-

tion" describes the FHWA research and development program.

(v) The External Audit Manual provides guidance to FHWA auditors in their review of State programs and processes.

(vi) The Civil Rights and Equal Opportunity Manual provides guidance to FHWA and State Civil Rights and Equal Employment Opportunity Officers.

(vii) The BMCS Operations Manual provides program guidance for all field employees assigned to the motor carrier safety program.

(viii) The Highway Safety Program Manual, issued jointly by FHWA and NHTSA, contains volumes relating to the joint administration of the program.

(6) Handbooks are internal operating instructions published in book form where, because of the program area covered, it is desirable to provide greater detail of administrative and technical instructions.

(7) Transmittals identify and explain the original issuance or page change, provide background information, and provide filing instructions for insertion of new pages and removal of changed pages, or both.

(49 U.S.C. 1655) [39 FR 1512, Jan. 10, 1974]

§ 1.33 Conflicts of interest.

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such

officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

§ 1.34 Secondary road plan.

The approval by the Administrator of a State's certified statement of its secondary road plan, pursuant to 23 U.S.C. 117 will remain in effect for such time as the Administrator in his discretion may determine. Projects undertaken pursuant to such approved certified statement shall not be subject to the following sections of the regulations in this part: §§ 1.10; 1.15; 1.16; 1.18; 1.19; 1.20; 1.21; 1.22; 1.24 (b), (c), (d) and (e).

§ 1.35 Bonus program.

(a) Any agreement entered into by a State pursuant to the provisions of section 12 of the Federal-Aid Highway Act of 1958, Pub. L. 85-381, 72 Stat. 95, as amended, shall provide for the control or regulation of outdoor advertising, consistent with the advertising policy and standards promulgated by the Administrator, in areas adjacent to the entire mileage of the Interstate System within that State, except such segments as may be excluded from the application of such policy and standards by section 12.

(b) Any such agreement for the control of advertising may provide for establishing publicly owned informational sites, whether publicly or privately operated, within the limits of or adjacent to the right-of-way of the Interstate System on condition that no such site shall be established or maintained except at locations and in accordance with plans, in furtherance of the advertising policy and standards, submitted to and approved by the Administrator.

(c) No advertising right in the acquisition of which Federal funds participated shall be disposed of without the prior approval of the Administrator.

[39 FR 28628, Aug. 9, 1974]

§ 1.36 Compliance with Federal laws and regulations.

If the Administrator determines that a State has violated or failed to comply with the Federal laws or the regulations in this part with respect to a project, he may withhold payment to the State of Federal funds on account of such project, withhold approval of further projects in the State, and take such other action that he deems appropriate under

the circumstances, until compliance or remedial action has been accomplished by the State to the satisfaction of the Administrator.

§ 1.37 Delegation of authority.

The Administrator has been delegated authority to perform the functions vested in the Secretary under Federal law.

The Administrator is authorized to redelegate any power or authority conferred upon him to any other official or employee of the Federal Highway Administration as in his judgment will result in efficiency and economy in the effectuation of the purposes of Federal law and the regulations in this part. Any redelegation by the Administrator may include the power to make successive redelegations of authority to the extent deemed desirable by him. Delegations made under regulations heretofore in effect shall continue in full force and effect until modified or revoked.

[25 FR 4162, May 11, 1960, as amended at 35 FR 18719, Dec. 10, 1970; 38 FR 11086, May 4, 1973]

§ 1.38 Application of regulations.

The regulations in this part shall take effect upon publication in the **FEDERAL REGISTER** and shall supersede all regulations heretofore in effect for carrying out the provisions of Federal laws.

PARTS 2-10 [RESERVED]

PART 11—ACCOUNTING

Sec.

11.301. Purpose.

11.302. Monthly reporting by State highway departments.

11.303. Distribution of costs.

AUTHORITY: 31 U.S.C. 66.

SOURCE: 39 FR 26407, July 19, 1974, unless otherwise noted.

§ 11.301 Purpose.

The purpose of this directive is to outline the procedures by which States shall be required to submit reports of unbilled accrued costs on Federal-aid programs. United States Code, title 31 requires, in part, that each Federal agency maintain its accounting records on an accrual basis; therefore, Federal Highway Administration (FHWA) accounts must include the cost of work performed by and for the States that has not been billed to FHWA, in addition to the cost of work performed and previously billed.

§ 11.302 Monthly reporting by State Highway Departments.

Each State shall submit a report of unbilled costs as of the last day of each month, signed and dated by an authorized official of the State highway department.

(a) Right-of-Way—amounts (1) paid former owners; (2) placed in escrow for future payment; and (3) paid for appraisal fees and other incidental costs of right-of-way.

(b) Construction—amounts paid to contractors, State construction employees, or vendors for work performed and material received.

(c) Railroad and Utility—amounts paid to railroad and utility companies.

(d) Preliminary and Construction Engineering—amounts paid for engineering services or materials.

§ 11.303 Distribution of costs.

Unbilled accrued costs incurred against the Highway Trust Fund are to be reported for Federal-aid by class of funds, Emergency Relief, and Bridges over Federal dams. Unbilled accrued costs incurred against other appropriations are to be reported separately by appropriation.

PART 12—FEDERAL-AID HIGHWAY PROGRAMS—STATE INTERNAL AUDIT RESPONSIBILITY

Sec.

12.1 Purpose.

12.2 Definitions.

12.3 Policy.

12.4 Applicability.

12.5 Audit Standards.

12.6 Retention of Records.

12.7 State Procedure Submissions.

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b).

SOURCE: 39 FR 40493, Nov. 18, 1974, unless otherwise noted.

§ 12.1 Purpose.

The purpose of the regulations in this part is to establish the State responsibility for internal audit and to identify the standards under which the audits will be accomplished.

§ 12.2 Definitions.

(a) The word "audit" means a systematic review and appraisal of the accounting, administrative and operational controls in Federal-aid related activities to determine and report on whether:

(1) Financial operations are properly conducted;

(2) Financial reports and claims are presented fairly; and

(3) Applicable Federal and State laws and regulations have been complied with.

(b) The word "State" means any of the several States of the United States, the District of Columbia, and Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 12.3 Policy.

The correctness and propriety of Federal-aid claims and compliance with governing laws and regulations are inherent in the certifying responsibility of the State. Consistent with this responsibility, audits are to be made by the State or at its direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations and administrative requirements. The audits will be scheduled with reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, size and complexity of the activity. Audits which are reviewed and determined acceptable by the Federal Highway Administration will be used in lieu of Federal audits.

§ 12.4 Applicability.

The regulations in this part apply to all organizations that have the delegated authority to administer the State highway program involving Federal-aid funding under Title 23, United States Code.

§ 12.5 Audit Standards.

All internal audits will be conducted in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the Comptroller General of the United States in June 1972.

§ 12.6 Retention of Records.

Working papers and audit reports prepared by the State shall be retained by the State and made available for review by authorized Federal officials for the period set forth in Subpart A of Part 17 of this title.

§ 12.7 State Procedure Submissions.

(a) States shall forward to the Federal Highway Administration, on or before February 18, 1975, a submission evi-

dencing compliance with this part. The submission should include:

(1) Organization and functional statements delineating and assigning internal audit responsibility;

(2) Policy directives which conform to the audit standards and requirements set forth in this part; and

(3) Present staffing levels, planned staffing levels and collateral duties of internal audit personnel.

(b) States that do not meet the requirements of § 12.7(a) must submit, on or before February 18, 1975, an implementation plan outlining the steps proposed to be taken to meet the requirements of this part.

PARTS 13—15 [Reserved]

PART 16—STATEMENT OF POLICY AS TO ADMINISTRATIVE ACTION TO BE TAKEN BY THE FEDERAL HIGHWAY ADMINISTRATOR IN INSTANCES OF IRREGULARITIES¹

Sec.

16.1 Purpose.

16.2 Definitions.

16.3 Nature of Administrative action.

16.4 Administrative action to be taken under various situations.

16.5 Other instances of irregularities.

16.6 Notice of proposed administrative action.

16.7 Hearings.

16.8 Determination and notice of administrative action.

AUTHORITY: The provisions of this Part 16 issued under sec. 315, 72 Stat. 915; 23 U.S.C. 315; delegation of authority in 1.48(b) of the regulations of the Office of the Secretary, 35 F.R. 4959.

SOURCE: The provisions of this Part 16 appear at 27 F.R. 8448, Aug. 23, 1962, as amended at 35 F.R. 18719, Dec. 10, 1970, unless otherwise noted. Redesignated at 39 FR 10430, Mar. 20, 1974.

§ 16.1 Purpose.

The purpose of this part is to prescribe the administrative action which shall be taken by the Administrator in order to safeguard the Federal interest in instances of irregularities in the administration and execution of the direct-Federal and Federal-aid highway programs. It is applicable to personnel of the Federal Highway Administration (referred to as the Administration in this part), and State highway departments, highway construction contractors and organizations including personnel thereof, or

to other persons or organizations performing services for the Administration or State highway departments on a fee or contract basis.

§ 16.2 Definitions.

Terms defined in 23 U.S.C. 101(a) and Part 1 of this chapter shall have the same meaning where used in this part, except as modified herein.

§ 16.3 Nature of administrative action.

(a) *General.* When an irregularity occurs as described in §§ 16.4 and 16.5 effective administrative action shall be instituted by the Administrator according to the circumstances, nature, and seriousness of the offense.

(b) *Direct-Federal projects.* Administrative action and procedures involving contractors and contractor organizations performing services for the Bureau in connection with the direct-Federal highway program or against whom administrative action has been taken under § 16.4 or § 16.5 in connection with Federal-aid projects and who are seeking to perform services for the Bureau in connection with the direct-Federal highway program shall be governed by applicable Federal Procurement Regulations (41 CFR Subpart 1-1.6).

(c) *Administration personnel.* Administrative action with respect to Administration personnel shall be consistent with and subject to applicable civil service laws, rules, and regulations.

(d) *State highway departments.* (1) The administrative action to be taken by the Administrator with respect to the indicated irregularities shall not relieve a State highway department of its responsibilities in connection with these same matters, nor is such action by the Administrator a substitute for corrective action as would normally be taken by a State under the described situations.

(2) If the frequency, seriousness, nature, or extent of any violation is such as to cast doubt on the ability of a State highway department to discharge its responsibilities in an adequate manner, or is such as may affect continued eligibility of Federal aid under the provisions of Federal-aid legislation, regulations, or directives, a complete evaluation of the highway department organization shall be made by the Administrator for the purpose of determining an appropriate course of action.

(e) *Department of Justice procedures.* Irregularities which warrant referral to

¹ Redesignated at 39 FR 10430, Mar. 20, 1974.

the United States Department of Justice shall be processed in accordance with applicable requirements and procedures of that department.

§ 16.4 Administrative action to be taken under various situations.

(a) *Situation No. 1—(1) Irregularity.* Clear and convincing evidence of fraud, bribery, collusion, conspiracy, or other serious offense involving violation of State or Federal criminal statutes in connection with a project requiring Bureau approval or concurrence, with or without evidence of failure of substantial conformity with project plans and specifications.

(2) *Administrative action.* (1) Administration personnel who are involved shall be subject to suspension pending completion of Administration or State investigations.

(ii) State personnel who are involved shall be unacceptable for employment on any highway project requiring Administration approval or concurrence pending completion of Administration or State investigations.

(iii) The contractor, contractor organization or personnel thereof, or other person or organization performing services for the Administration or State highway department on a fee or contract basis who are involved shall be unacceptable for employment on any future highway project requiring Administration approval or concurrence pending completion of Administration or State investigations.

(iv) Federal-aid reimbursement payments to the State on an affected project shall not exceed 75 percent of the Federal pro rata share of the total cost of such project pending completion of Administration investigation.

(v) After investigation, Administration personnel who are found to be at fault shall be subject to removal and disqualification for employment on any highway project requiring Administration approval or concurrence.

(vi) After investigation, State personnel who are found to be at fault shall be unacceptable for employment on any highway project requiring Administration approval or concurrence for a period of three months to three years.

(vii) After investigation, the contractor, contractor organization or personnel thereof, or other person or organization performing services for the Administration or State highway department

on a fee or contract basis who are found to be at fault shall be unacceptable for employment on any future highway project requiring Administration approval or concurrence for a period of three months to three years.

(viii) If investigation discloses a failure of substantial conformity with project plans and specifications, Federal-aid reimbursement to the State for project costs of affected items shall be withheld until the work is performed in conformity with project plans and specifications, and Federal funds shall not participate in the costs of correction.

(b) *Situation No. 2—(1) Irregularity.* Establishment by admission, or conviction, or judgment of a court of competent jurisdiction that fraud, bribery, collusion, conspiracy, or other criminal offense has been committed in connection with any highway project requiring Administration approval or concurrence with or without failure of substantial conformity with project plans and specifications.

(2) *Administrative action.* (1) Administration personnel at fault shall be subject to removal and disqualification for employment on any highway project requiring Administration approval or concurrence.

(ii) State personnel at fault shall be unacceptable for employment on any highway project requiring Administration approval or concurrence for a period of six months to three years.

(iii) The contractor, contractor organization or personnel thereof, or other person or organization performing services for the Administration or State highway department on a fee or contract basis who are at fault shall be unacceptable for employment on any future highway project requiring Administration approval or concurrence for a period of six months to three years.

(iv) Federal-aid reimbursement payments to the State for project costs of affected items shall be withheld until the work is performed in conformity with project plans and specifications, and Federal funds shall not participate in the costs of correction.

(c) *Situation No. 3—(1) Irregularity.* Substantial evidence of a conflict of interest under § 1.33 of this chapter, effective May 11, 1960; or the establishment by admission, or conviction, or judgment of a court of competent jurisdiction of a violation of any law, regulation, or directive of Federal or State government

relating to conflict of interest prohibitions in connection with the administration or execution of any highway project requiring Administration approval or concurrence.

(2) *Administrative action.* To the extent that conflicts of interest result in circumstances similar to those described in paragraphs (a) and (b) respectively, of this section, or involve violation of any law, regulation, or directive of Federal or State government appropriate action shall be taken that is consistent with the remedial measures applicable to such situations.

§ 16.5 Other instances of irregularities.

With respect to irregularities not described in § 16.4, the Administrator shall consider the individual circumstances thereof and remedial action shall conform as far as practicable to the administrative action prescribed in § 16.4.

§ 16.6 Notice of proposed administrative action.

(a) *Pending completion of investigations.* The individual, or contractor organization or other person or organization performing services for the Administration or State highway department on a fee or contract basis who are involved shall be furnished a written notice of unacceptability for employment stating the general reasons therefor and that it is for a temporary period pending the completion of investigations and such legal proceedings as may ensue. A copy of such notice shall be furnished the appropriate State highway department organization.

(b) *After completion of investigations.* The individual, or contractor organization or other person or organization performing services for the Administration or State highway department on a fee or contract basis shall be furnished a written notice by registered mail (return receipt requested) setting forth the reasons for the proposed administrative action. Such notice shall advise that unless a written request for a hearing is received within 10 days from the date of receipt of such notice, that appropriate administrative action shall be instituted without further notice.

§ 16.7 Hearings.

(a) *Pending completion of investigations.* Hearings shall not be conducted pending the completion of investigations by the Administration; or without ap-

proval of the Department of Justice when the matter is under investigation by that Department; or after notice of and during such court proceedings as may ensue.

(b) *Judgment of a court of competent jurisdiction.* Hearings shall not be conducted when administrative action is based on conviction or judgment by a court of competent jurisdiction.

(c) *After completion of investigations.* Hearings requested in connection with proposed administrative action shall be conducted before a Hearing Board, the members of which shall be designated by the Administrator. Reasonable opportunity shall be afforded the contractor, contractor organization or other affected persons or organizations to appear with witnesses and counsel to present facts or circumstances showing cause why administrative action should not be instituted. Hearings shall be nonadversary in nature and the provisions of section 7 of the Administrative Procedure Act (the Act of June 11, 1946, 60 Stat. 241; 5 U.S.C. 1006), shall not apply.

(d) *Notice and time of hearings.* Adequate written notice of the time, place, and date of hearing shall be given to the individual or organization concerned and such hearing shall be conducted within 20 days after receipt of request for a hearing unless the board determines that, for good cause shown, additional time should be granted.

(e) *Administrative findings.* In all hearings conducted under this section, the board shall find the facts specially and shall submit such findings to the Administrator for his review and final action.

[27 F.R. 8448, Aug. 28, 1962, as amended at 28 F.R. 5206, May 24, 1963]

§ 16.8 Determination and notice of administrative action.

(a) Based upon the findings of fact required by § 16.7(e), the Administrator shall determine the administrative action to be taken with respect to any indicated irregularity.

(b) Administrative action as determined by the Administrator shall be final, except that the periods of time during which an individual or organization shall be unacceptable to the Administrator on direct-Federal or Federal-aid projects may be increased or decreased in individual cases at any time, if, in the judgment of the Administrator, compelling reasons warrant such action.

(c) The Administrator shall notify the individual or organization of his determination setting forth the period of time during which such individual or organization shall be unacceptable for employment on highway projects requiring Administration approval or concurrence. Copies of such notification shall be forwarded to the appropriate state highway organizations.

PART 17—RECORDKEEPING

Subpart A—Recordkeeping Requirements and Retention Schedules for Federal-Aid Highway Records of State Highway Departments

Sec.

- 17.101 Purpose.
- 17.102 Applicability.
- 17.103 Waivers.
- 17.104 Definition of terms.
- 17.105 Retention Schedules for Federal-Aid Highway Records for State Highway Departments.
- 17.106 Authorization to Microfilm Records.
- 17.107 Microfilm Standards to be Applied.

Appendix A—Retention Schedules.

AUTHORITY: 23 USC 315, 49 USC 1655, and the delegation of 49 CFR 1.48.

SOURCE: 39 FR 17306, May 15, 1974, unless otherwise noted.

§ 17.101 Purpose.

The regulations in this subpart A prescribe the recordkeeping requirements and retention schedules for State highway departments concerning the nature and extent of documentation required by the Federal Highway Administration (FHWA) for States to be eligible for Federal-aid reimbursement under the provisions of Title 23, United States Code, "Highways."

§ 17.102 Applicability.

(a) *Project-related records.* The records defined in § 17.104(a) and listed in Appendix A hereto are to be maintained or caused to be maintained by the State. Complete project documentation and maintenance of adequate records (including source data) to support a State's claim for reimbursement is the responsibility of the State highway department. These State records are subject to the provisions of this directive.

(b) *Railroad, utility or other third party project records.* Where records pertaining to Federal-aid highway matters are generated by third parties, it is the State's responsibility to clearly de-

fine the FHWA records retention requirements in agreements or subcontracts and to insure that they are complied with. Where reimbursement is requested, the costs incurred by railroads, utilities and other third parties are subject to examination and audit by the State and Federal Governments. To accomplish this, the records and accounts therefor will be made available for examination by representatives of the State and Federal Governments for a period of not less than 3 years from the date final payment has been received by the railroad, utility or other third party.

(c) *Toll facilities records.* Where Federal funds participate in a project for the construction of a toll bridge, toll tunnel, or approach to a toll facility, the State highway department shall maintain or cause to be maintained all records (including source data) set forth in Appendix A. Such records shall be retained until the facility shall have been operated on a toll-free basis for a period of at least 3 consecutive years.

(d) *State and Community Highway Safety Programs.* This directive does not apply to recordkeeping requirements of the State and Community Highway Safety Programs.

(e) *Federal records.* Federal records are those which document the Federal function of administering Federal-Aid Highway Programs. These records are maintained by FHWA offices and are not subject to provisions of this subpart A but are controlled by the authorized FHWA records schedules contained in Volume 34, Chapter IX, of the FHWA Administrative Manual.

(f) *Availability for inspection.* Records and source data maintained under §§ 17.102(a) and 17.102(b) shall be available at all reasonable times for inspection by any authorized representative of the Federal Government and copies thereof shall be furnished when requested.

§ 17.103 Waivers.

No waiver from any provision of this subpart A will be granted by the Federal Highway Administrator without full justification by the State highway department. Each written request from a State highway department for a waiver shall demonstrate that unusual circumstances warrant a departure from the prescribed minimum records retention period, procedures or techniques, or that

compliance with the retention schedule would impose an unreasonable burden upon the State or contractor. The granting of a waiver is expressly reserved to the Federal Highway Administrator and shall be contingent upon his determination that the waiver requested is in the public interest.

§ 17.104 Definition of Terms.

(a) *Records.* Includes all accounts, papers, maps, photographs, or other documentary materials regardless of physical form or characteristics, made or received by any agency, firm, or individual in connection with the transaction of Federal-aid highway business and preserved or appropriate for preservation as evidence of their organization, functions, policies, decisions, procedures, and operations or because of the informational value of data contained therein.

(b) *Retention period.* The minimum period of time records are required to be held. State highway departments may hold records for longer periods of time if they desire.

(c) *Final voucher.* Refers to the final voucher submitted by the State to FHWA with respect to a particular project.

§ 17.105 Retention Schedules of Federal-Aid Highway Records for State Highway Departments.

(a) *General.* Federal-aid project and project-related records shall be retained by State highway departments in accordance with the records retention schedule established by the Federal Highway Administrator in Appendix A. These record-keeping requirements have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (OMB No. 04-R2296). The schedule provides for:

(1) The standard 3 years after submission of final voucher retention period for those records which are Federal-aid project oriented.

(2) A 3 year retention period which may expire earlier than the 3 years after submission of final voucher period for certain cost accounting and fiscal type files which usually relate to more than one project and are not project oriented. The retention period for these records shall be calculated from the end of the fiscal or calendar year, as appropriate, in which an entry is made. Where there is a series of such entries involving a specific record, the retention period shall

be calculated from the end of the year in which the final entry is made.

(b) *Applicability.* Compliance with the retention requirements of Appendix A does not relieve a State or contractor from retaining any records for whatever longer periods may be required by any other applicable contract clause or lawful requirement, e.g., regulations of U.S. Department of Labor or Internal Revenue Service.

(c) *Request for records disposition.* Each State shall request final clearance from the FHWA division engineer for each category of record, prior to the application of the retention provisions of Appendix A designated as "3 years from end of fiscal or calendar year, as appropriate, in which an entry is made." Such final clearance from the division engineer will be contingent upon the completion of audit and the clearance of any and all questions raised related thereto. If a claim, investigation or litigation is pending after submission of the final voucher, or payment of any amount claimed is suspended by the division engineer, the retention period will not begin until final settlement of the claim, investigation or litigation, or approval of payment for amounts suspended.

§ 17.106 Authorization To Microfilm Records.

State highway departments are authorized to use computer output microfilm or to substitute microfilm for original Federal-aid highway records in accordance with the standards prescribed in § 17.107.

§ 17.107 Microfilm Standards To Be Applied.

(a) *Original documents exclusive of computer output microfilm records.* (1) Prior to microfilming, the original documents shall be prepared, arranged, classified, and indexed so as to readily permit the subsequent location, examination, and reproduction of the photographs thereof. Any significant characteristic, feature, or other attribute of the records which photography would not clearly reflect (e.g., that the record is a copy or that certain figures thereon are in color) shall be indicated on the records at the time of such arrangement, classification, and identification. When a number of records to be microfilmed have in common such a characteristic or attribute, an appropriate notation identifying the characteristic or attribute may be indi-

cated in a statement at the beginning of the roll of film or group of aperture cards instead of on each individual record. Any notations on the face or reverse side of any document shall be photographed and identified as forming an integral part of the original document.

(2) Each roll of film or group of aperture cards shall include a microfilm of a certificate or certificates stating that the photographs are direct and facsimile reproductions of the original records and that they have been made in accordance with prescribed instructions. Such certificate or certificates shall be executed by a person or persons having personal knowledge of the facts covered thereby.

(3) The photographic matter on each roll or group of aperture cards shall begin and end with a statement as to the nature and order of arrangement of the records reproduced, the name of the photographer, and the date. Rolls of film shall not be cut. Supplemental or retaken film, whether of misplaced or omitted documents or of portions of a film found to be spoiled or illegible or of

other matter, shall be attached to the beginning of the roll or listed at the beginning of the group of aperture cards, and in such event the aforementioned certificate or certificates shall cover also such supplemental or retaken film and shall state the reasons for taking such film.

(4) All film stock shall be approved permanent-record microfilm type either perforated or unperforated, such as meets the minimum specifications of the National Bureau of Standards. (Such film stock may be identified by a manufacturer's mark, a solid triangle after the word "safety" in the edge of the film.)

(b) *Reproduction and indexing.* (1) All microfilm records shall be such that clearly readable hard copy (paper) reproductions can be made during the periods prescribed in the records schedule for the retention of the records concerned.

(2) The microfilm records shall be indexed and retained in such manner as will render them readily accessible and identifiable.

APPENDIX A—RETENTION SCHEDULES OF FEDERAL-AID HIGHWAY RECORDS FOR STATE HIGHWAY DEPARTMENTS

The project related records listed in this appendix are to be maintained or caused to be maintained by the State for the periods designated.

Project records (filed or identified by project)

<i>Category of records</i>	<i>Minimum retention period</i>
1. Program documents-----	8 years after submission of the final voucher for last project programed.
2. Project agreements-----	3 years after submission of the final voucher for a project.
3. Letters of authority or notices to proceed-----	Do.
4. Plans, specifications and estimates (PS&E)-----	Do.
5. Contract records, including: Performance and payment bonds, prequalifying prospective bidders, licensing contractors, advertising bids, engineer's estimates, bid openings tabulations, award of contract and concurrence, agreement estimates, anticollusion certification for force account construction, and any similar records considered necessary to document the contract.	Do.
6. 3d party contracts or agreements-----	Do.
7. Supplemental agreements-----	Do.
8. Change or extra work orders-----	3 years after submission of the final voucher for a project.
9. Stop and start work orders-----	Do.
10. Right-of-way maps, construction plans and changes—tracings—Shop drawings, working drawings—prints.	Do.
11. Project diaries and/or journals.	Do.
12. Field notes and computation books including final quantity books, summary books or records.	Do.

<i>Category of records</i>	<i>Minimum retention period</i>
13. Records and reports of materials used such as: Haul tickets, truck delivery tickets, weight tickets, daily water reports, daily rolling reports, and similar records.	3 years after submission of the final voucher for a project.
14. Supplies and equipment records such as: mill shipping records, bills of lading, supplier's invoices, certificate of materials for manufactured items, and similar records.	Do.
15. Inspection reports.....	Do.
16. Materials test reports.....	Do.
17. Progress and final pay estimates.....	Do.
18. Final construction report.....	Do.
19. As-built plans—tracings.....	Do.
20. Third party contract audit reports and related work papers.	Do.
21. Copies of contractor payrolls A-2 and weekly statements with respect to the wages paid during the preceding weekly payroll period.	Do.
<i>Right-of-way records (filed or identified by project)</i>	
1. Estimates of cost.....	Do.
2. Maps of proposed location and alternate routes.	Do.
3. Appraisal reports.....	Do.
4. Fee appraisal contracts.....	Do.
5. Negotiation reports.....	Do.
6. Negotiator's diary.....	Do.
7. Reviewing appraisers' and/or trial attorney's statements and recommendations.	Do.
8. Certificates of acquisition and cost of right-of-way.	Do.
9. Applications and supporting papers (including recordation) for lands or interest in lands acquired by the United States.	Do.
10. Relocation assistance records including public notices, hearings, requests for assistance and payments, including all supporting data such as receipted bills, or other evidence of expenses incurred.	Do.
11. Administrative settlement records.....	Do.
12. Disposal documents and related records.....	Do.
13. Property management records.....	Do.
<i>Legal records (filed or identified by project)</i>	
1. Certification and transcripts of public hearings on proposed route locations.	Do.
2. Contractor's public liability and property damage insurance.	Do.
3. Condemnation case files.....	Do.
4. Claim records.....	Do.
5. Tax records.....	Do.
6. Municipal agreements.....	Do.
<i>Financial and accounting records (filed by fiscal or calendar year, as appropriate)</i>	
1. Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders, or other documents which detail the material or services billed on the related invoices.	3 years from end of fiscal or calendar year, as appropriate, in which an entry is made.
2. Material work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies.	Do.

<i>Category of records</i>	<i>Minimum retention period</i>
3. Cash advance recapitulations, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses.	Do.
4. Paid, canceled, and voided checks, other than those issued for the payment of salary and wages.	Do.
5. Accounts payable records to support disbursements of funds for materials, equipment, supplies, and services containing originals or copies of the following and related documents: Remittance advices and statements, vendors' invoices, invoice audits and distribution slips.	Do.
6. Labor cost distribution cards or equivalent documents.	Do.
7. Petty cash records showing description of expenditures, to whom paid, name of person authorizing payment, and date, including copies of vouchers and other supporting documents.	Do.

Pay administration records (filed by fiscal or calendar year, as appropriate)

1. Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements.	3 years from end of fiscal or calendar year, as appropriate, in which an entry is made.
2. Clock cards or other time and attendance cards.	Do.
3. Paid checks, receipts for wages paid in cash, or other evidence of payments for services rendered by employees.	Do.

Procurement and supply records (filed by fiscal or calendar year, as appropriate)

1. Stores requisitions for materials, supplies, equipment, and services.	3 years from end of fiscal or calendar year, as appropriate, in which an entry is made.
2. Work orders for maintenance and other services.	Do.
3. Equipment records, consisting of equipment utilization and status reports and equipment repair orders.	Do.
4. Expendable property records, reflecting accountability for the receipt and use of material in the performance of a contract.	Do.
5. Purchase order files for supplies equipment, materials, or services, to be used in the performance of a contract.	3 years from end of fiscal or calendar year, as appropriate, in which an entry is made.

Toll facilities

1. Copies of statutory authorities creating study committees or similar bodies to study feasibility of toll facilities.	3 consecutive years after facility operated on toll-free basis.
2. Copies of statutory authority.	Do.
3. Newspaper clippings, press releases, official statements, etc., concerning development and progress.	Do.
4. Copies of engineering and financial feasibility reports.	Do.
5. Copies of bond prospectus issued.	Do.
6. Copies of trust indenture or trust agreement issued in connection with bond sale.	Do.
7. Contract award data (PR-525).	Do.
8. Copies of progress reports prepared by State or consultant during construction, including financial audit.	Do.

<i>Category of records</i>	<i>Minimum retention period</i>
9. Copies of published annual reports of authority or annual audit.	Do.
10. Annual statement of source and application of funds (PR-530, 531, 532, 532 a, b, 535).	Do.
11. Annual schedules giving details of bond issues and future debt service requirements (PR-541, 542, 543, and 544).	Do.
12. Copies of monthly statements of operations giving toll revenues, operating costs, and traffic, where such data are prepared and published by the authority.	Do.
13. Copies of adopted toll schedules-----	Do.
14. Date of initiation or termination of tolls-----	Do.

Miscellaneous records

- | | |
|---|--|
| 1. General correspondence files affecting Federal-aid programs, policies, or procedures. | 3 years after submission of final voucher for all Federal-aid funds pertaining to each program, or after 10 years. |
| 2. Organization tables, charts, functional statements, and policy or procedures manuals or issuances. | 3 years after submission of final voucher for last project affected, or after 10 years. |
| 3. State internal audit reports and supporting working papers. | 3 years subsequent to the year in which the report was issued. |

PARTS 18—99.[RESERVED]

SUBCHAPTER B—PAYMENT PROCEDURES

PARTS 100—129 [RESERVED]

PART 130—ADVANCE OF FUNDS

Subpart A [Reserved]

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- 130.401. Purpose.
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Subpart A [Reserved]

Subpart B—Advance Fund Accounts

AUTHORITY: 23 U.S.C. 124, 23 U.S.C. 315, 49 CFR 1.48(b).

SOURCE: 39 FR 26407, July 19, 1974, unless otherwise noted.

§ 130.201 Purpose.

To prescribe procedures and accounting requirements for advances of funds to States.

§ 130.202 Authority.

23 U.S.C. 124 authorizes the Secretary of Transportation, if he determines it is necessary for expeditious completion of Federal-aid projects, to advance to any State, the Federal share of the cost of projects on any of the Federal-aid systems, including the Interstate System, to enable the State highway department to make prompt payment for acquisitions of rights-of-way and for construction as it progresses.

§ 130.203 Request for advance.

(a) Any State desiring an advance of funds under the provisions of the legislation cited above must submit a properly executed request for advance of funds. The request must contain the following:

Pursuant to the provisions of The United States Code, Title 23, Section 124, an advance of funds is requested in the amount of ----- dollars, \$----- and the highway department and the Treasurer (or other official authorized under the laws of the State to receive Federal-aid Highway funds) of the State of ----- do hereby agree to receive, deposit and disburse the funds advanced under this and any supplemental request(s) in conformity with the provisions of the regulations issued thereunder and the procedures prescribed by the Federal Highway Administrator; and the undersigned do hereby certify that the bond of the treasurer (or other official acting as the Custodian of said fund) shall embrace and cover the proper accounting for any funds so advanced.

Four copies of the request for advance (only one shall be signed) are to be submitted to the Division Engineer of the Federal Highway Administration (FHWA), together with a copy of the agreement (where applicable) referred to in § 130.206(b) and a statement of the necessity for the advance, referred to in § 130.203(c). The request and its accompanying documents will be transmitted, with the Division Engineer's recommendations, through the regional office to the Washington Headquarters. Upon approval, one copy of the request will be returned to the State with the check.

(b) The amount of the advance will be limited to the anticipated obligations that will mature during the first thirty day period. If the initial advance should prove to be insufficient, a supplemental request should be submitted in the same manner as the original request, except that no supplemental agreement with the financial institution is necessary. At no time, however, will the advance be more than one-fourth of the latest year's apportionment made by the Secretary of Transportation to the State for the Primary, Secondary, and Interstate Systems.

(c) A determination of necessity must be made by the Federal Highway Administrator before an advance of funds may be made to any State. The State, therefore, must submit with its request for an advance, or an increase in its ad-

vance, a statement showing the need for the advance or increase.

§ 130.204 Use of advanced funds.

(a) Funds advanced to a State may be disbursed only upon vouchers approved by the State highway department.

(b) Funds advanced to a State shall be eligible to pay costs of projects, which projects have been covered by project agreement or are to be covered by project agreement in the immediate future, as follows:

(1) For lands or interests in lands acquired pursuant to the laws of the State and subsequent to the issuance of the authorization by the Division Engineer to proceed with the right-of-way acquisitions other than those advance acquisitions described under 23 U.S.C. 108(c), *Provided*:

(i) The Division Engineer has approved the location of the project and the approximate right-of-way limits therefor,

(ii) A sound parcel appraisal of each tract was made prior to negotiation or institution of condemnation proceedings and,

(iii) If negotiations (including consent judgments) exceed appraisals, justifications of settlements are of record. Such disbursements may include payments for associated items, and may be made to the parties of interest, into courts of jurisdiction where condemnation or other taking proceedings are to be heard, or into other proper depositories that have authority to disburse from such sums in escrow to or for the parties of interest. Such disbursements may also include payments required of the State for court deposits and guardianship fees.

(2) For construction work which has actually been performed and approved for the purposes of this Subpart, the concurrence in the award of contract by the Division Engineer shall be construed as constituting approval of construction.

§ 130.205 Custodian of funds.

(a) The advance will be made to the order of the State official authorized under the State laws as custodian of Federal-aid highway funds.

(b) The Custodian of Funds shall keep a separate ledger account with each depository and a control account designated "Trust Account-Federal-Aid Highway Act," to which shall be posted the original and any subsequent advance,

and daily detail or daily totals of receipts and disbursements. Unless precluded by State law or administrative policy, he shall use a separate series of serially numbered checks for payments from the Trust Account and each such check shall show on its face the date, payee, voucher and/or warrant number for which payment is made, and the words "Trust Account-Federal-Aid Highway Act," and he shall sign checks only on proper vouchers approved by the State highway department, or, where the State fiscal system requires, upon warrants supported by such vouchers. His accounts and paid checks must be available for audit by an authorized representative of the Federal Government.

(c) The Custodian of Funds shall notify the State highway department promptly of all advances and reimbursements received from the FHWA and shall submit to the State highway department a monthly statement of receipts, disbursements, and opening and closing balances of this account.

§ 130.206 Deposit of funds.

(a) Unless specifically prohibited by State law or for other cause or reason acceptable to the Federal Highway Administrator all sums advanced to a State shall be deposited in a special account in a financial institution. Where funds advanced are so deposited, such funds shall not be mingled with funds of the State.

(b) The financial institution in which deposit of the advance is to be made must agree in writing to accept the account and to furnish the FHWA, or its representative, certification of balance whenever requested and to permit audit of the account by representatives of the Federal Government. An authenticated copy of such agreement must accompany the State's initial request for an advance.

§ 130.207 Accounting by State highway department.

(a) The State highway department shall keep a chronological journal, register or abstract, according to its accounting system, of all vouchers forwarded to the Custodian of Funds for payment.

(b) The State highway department shall set up an account receivable with the FHWA showing the amount of each replenishment voucher submitted for reimbursement to the Trust Account and the amount of each repayment thereto.

(c) The State highway department shall maintain a subsidiary project

ledger. For each project financed in whole or in part from the Trust Account there shall be maintained a separate account to which detailed postings are to be made currently.

(d) Those State highway departments that can temporarily finance surveys and plans, construction engineering and force account work from regular State funds should do so, and then periodically, preferably at the time of closing the accounts for the month or at the end of an accounting period, draw a voucher on the Trust Account authorizing the transfer of such sundry amounts back to the State fund in total in order to avoid clearing a large number of small payments through the special account. Where the needs of the State highway department demand, no objection will be raised if the State highway department pays from the Trust Account 100 percent of the amount due grantors of land or construction contractors provided that not less frequently than once a month or at the end of the regular accounting period the State deposits into the Trust Account the State's share of all transactions through the Trust Account.

§ 130.208 Replenishment vouchers.

(a) Replenishment vouchers for construction of rights-of-way disbursements from the Trust Account are to be submitted to the FHWA promptly and in accordance with Volume 1, Chapter 4, section 6 of the Federal-Aid Highway Program Manual. It is realized that where, for example, condemnation proceedings are involved, there will be a delay in the submission of final vouchers particularly where the State has no authority to negotiate a settlement between itself and FHWA. However, even in those cases, the State is expected to process progress vouchers within the limit set out in Volume 1, Chapter 4, section 6 of the Federal-Aid Highway Program Manual for disbursements made from the Trust Account. The State should show on all such replenishment vouchers, following the name of the payee, the words "Trust Account" in parenthesis.

(b) If a disallowance is made by the FHWA on a replenishment voucher, the balancing entry should be recorded in the account receivable and on the project ledger as a disallowance. Any payments made by the State from this fund that are disallowed by the FHWA shall be either deducted from other vouchers in

the hands of the FHWA or repaid to said Trust Fund in the State.

§ 130.209 Interest.

Any interest received on advanced funds deposited in a special account as set forth in § 130.206 must be paid promptly to the FHWA by check drawn to the order of the "Federal Highway Administration."

Subpart C—Advance Fund Accounts (Defense Access Road Projects)

AUTHORITY: 23 U.S.C. 210(g), 23 U.S.C. 315, 49 CFR 1.49(b).

SOURCE: 39 FR 26408, July 19, 1974, unless otherwise noted.

§ 130.301 Purpose.

To prescribe procedures and accountability requirements for advances of Defense Access Road Funds to States.

§ 130.302 Authority.

23 U.S.C. 210(g) provides that, in order to expedite completion of any defense access road project, the Secretary of Transportation may, if he determines it necessary, advance to any State, out of Defense Access Road Funds transferred and available to the Department of Transportation, the Federal share of the cost of such project, to enable the State highway department to make payments for the acquisition of rights-of-way and for construction as it progresses.

§ 130.303 Request for advance.

(a) Any State desiring an advance of funds under the provisions of the legislation cited above must submit a properly executed request for advance of funds for each defense access road project. The request must contain the following:

Pursuant to the provisions of The United States Code, Title 23, Section 210, as amended, an advance of defense access road funds is requested in the amount of ----- dollars, \$----- and the highway department and the Treasurer (or other official authorized under the laws of the State to receive Federal highway funds) of the State of ----- do hereby agree to receive, deposit and disburse the funds advanced under this and any supplemental request(s) in conformity with the provisions of said Act, as amended, the regulations issued thereunder and the procedures prescribed by the Federal Highway Administrator; and the undersigned do hereby certify that the bond of the Treasurer (or other official acting as the Custodian of said fund) shall embrace and cover the proper accounting for any funds so advanced.

The State agrees, upon its own finding or upon receipt of a notification of a finding by the Federal Highway Administration that the advance or any portion thereof is in excess of the needs for which the advance was made, to repay without delay, such excess. If such excess is to be repaid by means of application thereof against current reimbursement vouchers, the State agrees to promptly notify the Federal Highway Administration as to which vouchers should be used for repayment.

One signed and three unsigned copies of each request for an advance are to be submitted to the Division Engineer of the Federal Highway Administration (FHWA), together with a signed copy of the agreement (where applicable) referred to in § 130.306(b) and a statement of the necessity for the advance, referred to in § 130.303(d). The request and its accompanying documents will be transmitted, with the Division Engineer's recommendations through the regional office to the Washington Headquarters. Upon approval, one copy of the request will be returned to the State.

(b) The amount of the advance will be limited to the Federal share of the obligations anticipated to be incurred by the State in connection with the defense access road project over a single construction season. If the project requires more than one construction season or it becomes apparent that the initial advance will prove to be insufficient, a supplemental request shall be submitted no more than sixty days prior to its actual need and in the same manner as the original request, except that no supplemental agreement with the financial institution is necessary. The amount of any supplemental advance together with the total amount already advanced for the particular project involved shall not exceed the total Federal funds under agreement. The supplemental request shall contain the following:

The advance herein requested, \$----- together with the amount(s) advanced, \$----- does not exceed the total Federal funds under agreement.

(c) Advances will only be made for defense access projects covered by a project agreement.

(d) A determination of necessity must be made by the Federal Highway Administrator before an advance of funds may be made to any State. The State therefore, must submit with its request for an advance, or an increase in the advance, a statement showing the need for the advance or increase. The request and

showing of necessity for the initial advance of Defense Access Road Funds does not necessarily require financial statements since the showing of necessity need not be based on insufficient State highway department funds. In such instances, it is expected that the statement will cite the State law that prohibits the expenditure of State funds on defense access projects or such other conditions and circumstances as may justify the advance.

§ 130.304 Use of advanced funds.

(a) Funds advanced to a State may be disbursed only upon vouchers approved by the State highway department.

(b) Sums advanced shall be available for the exclusive use of the project for which advanced.

§ 130.305 Custodian of funds.

(a) The advance for each defense project will be made to the order of the State official authorized under the State laws as custodian of Federal highway funds.

(b) The Custodian of Funds shall keep a separate ledger account with each depository and a control account designated "Trust Account, Federal Highway Act, Defense Access Road Project," to which shall be posted the original and any subsequent advance and the daily detail totals of receipts and disbursements. He shall use a separate series of serially numbered checks for payments from the Trust Account and each such check shall show on its face the date, payee, voucher and/or warrant number for which payment is made, and the words "Trust Account, Federal Highway Act, Defense Access Road Projects." He shall issue checks only on proper vouchers approved by the State highway department, or, where the State fiscal system requires, upon warrants supported by vouchers relating to defense access road projects for which the advance was made. His accounts and paid checks must be available for audit by the authorized representatives of the Federal Government.

(c) The Custodian of Funds shall notify the State highway department promptly of all advances received from the FHWA and shall submit to the State highway department a monthly statement of receipts, disbursements, and opening and closing balances of this account.

§ 130.306 Deposit of funds.

(a) Unless specifically precluded by State law or for other good cause or reason acceptable to the Federal Highway Administrator all sums advanced to a State shall be deposited in a special account in a financial institution. Where funds advanced are so deposited, such funds shall not be deposited to State fund accounts in such financial institution or otherwise mingled with the funds of the State.

(b) The financial institution in which deposit of the advance is to be made must agree in writing to accept the account and to furnish the FHWA or its representative certification of balance whenever requested and to permit audit of the account by the FHWA. An authenticated copy of such agreement must accompany the State's initial request for an advance.

§ 130.307 Accounting by State highway department.

(a) The State highway department shall keep a chronological journal, register or abstract, according to its accounting system, of all vouchers forwarded to the Custodian of Funds for payment.

(b) The State highway department shall maintain a subsidiary project ledger. For each project financed from the Trust Account there shall be maintained a separate account to which detailed postings are to be made currently.

(c) It is recommended that those State highway departments that can temporarily finance surveys and plans, construction engineering and force account work from regular State funds do so, and then periodically, preferably at the time of closing the accounts for the month or at the end of an accounting period, draw a voucher on the Trust Account authorizing the transfer of such sundry amounts back to the State fund in total in order to avoid clearing a large number of small payments through the special account.

§ 130.308 Vouchers of record.

(a) At the close of each accounting period the State shall report the extent of work completed through submission of "no payment" vouchers. Such vouchers will be prepared in accordance with Volume 1, Chapter 4, Section 6 of the Federal-Aid Highway Program Manual except that the total construction or rights-of-way disbursements to date will be entered in the spaces provided on the

voucher form for "total participating cost," "total amount claimed from U.S." and "less previous payments," with zero dollars shown in the space provided for "net amount claimed." Upon completion of the work, a final voucher will be submitted promptly. The State should show on all such vouchers following the name of the payee, the words "Trust Account, Federal Highway Act, Defense Access Road Projects" in parenthesis.

(b) Any payments made by the State from this fund that are disallowed by the FHWA shall be repaid to said Trust Fund and the project ledgers adjusted accordingly or deduction made against vouchers currently in the hands of the FHWA.

§ 130.309 Interest.

Any interest received on advanced funds deposited in a special account as set forth in section 130.306 must be paid promptly to the FHWA by check drawn to the order of the "Federal Highway Administration."

§ 130.310 Repayments.

Funds determined to be in excess of immediate requirements during the life of the project or funds released at the final voucher stage shall be repaid by reduction of amounts claimed on reimbursement vouchers submitted by the State for regular Federal-aid projects or, by a check or checks made payable to the "Federal Highway Administration" or both.

Subpart D—Advance Right-of-Way Revolving Funds

AUTHORITY: 23 U.S.C. 315; delegation of authority as 49 CFR 1.48(b).

SOURCE: 39 FR 18093, May 23, 1974, unless otherwise noted.

§ 130.401 Purpose.

To prescribe procedures and accounting requirements for advances from the right-of-way revolving fund.

§ 130.402 Authority.

23 U.S.C. 108(c) establishes a right-of-way revolving fund in the Treasury and authorizes the Secretary of Transportation to advance to any State, without interest, amounts available in such fund, to pay the entire costs of projects for the advance acquisition of right-of-way including moving and relocation costs.

§ 130.403 Request for advance.

(a) Subsequent to obligations of funds in accordance with section 7, chapter 2, volume 7 of the Federal-Aid Highway

Program Manual, a State desiring an advance of right-of-way revolving funds shall submit a letter of request to the division engineer. This letter shall include the following:

(1) Project numbers.

(2) Amount of advance per project required to:

(i) Meet estimated needs for next 90 days, or

(ii) Pay grantors based on recorded liabilities or actual disbursements.

(3) A statement that includes the following:

(i) Advance will be disbursed in accordance with provisions of 23 U.S.C. 108(c).

(ii) When advance is commingled with other funds, controls that will permit FHWA audit of the advance will be provided.

(iii) Interest earned on the advance will be paid promptly to FHWA.

(b) When the State needs the advance on an emergency basis, the Finance Division will accept a telephone request from the Regional Office and make the advance on the assurance that the written request will be promptly transmitted.

§ 130.404 Reports and audits.

(a) Each month any State utilizing the procedures under § 130.403(a) (2) (i) shall submit to the Division Engineer for transmittal to the Finance Division a statement showing:

(1) The date and amount of advances received, by project.

(2) Total expenditures through the 15th of the month, by project. This statement of advance and expenditures shall be forwarded promptly to insure receipt by the Finance Division by the 26th day of each month.

(b) The Division Engineer shall arrange for such periodic audit of the advance accounts as will determine compliance with the provisions of this directive.

§ 130.405 Repayment.

The State is required to repay the total amount advanced on a project as follows:

(a) Immediately upon termination of the period of time within which actual construction must be commenced (10 years following end of the fiscal year in which advance was made), or

(b) Upon approval by FHWA of the plans, specifications, and estimates for such project for the actual construction

on the rights-of-way for which funds were advanced, or

(c) When project funded from the right-of-way revolving fund is withdrawn or is converted to a regular Federal-aid project.

§ 130.406 Method of repayment.

(a) If a project is terminated by expiration of the 10-year period or by withdrawal, the State should repay the amounts advanced for the project by check drawn to the order of the "Federal Highway Administration." Any net rental income or proceeds from the sale of properties shall be repaid by separate check.

(b) When a right-of-way project is converted to a regularly funded Federal-aid right-of-way project, full repayment will be made by check as in paragraph (a) of this section. Any net rental income and proceeds from sale of properties may be shown as a previous payment on the first voucher submission on the regularly funded project or repaid by check as in paragraph (a) of this section.

PARTS 131—139 [RESERVED]

PART 140—REIMBURSEMENT

Subparts A—B [Reserved]

Subpart C—Percentage Reimbursement for Construction Engineering

Sec.

- 140.301 Purpose.
- 140.302 Definition.
- 140.303 Billing.
- 140.304 Request for and approval of percentage rate.

Subpart D—Percentage Reimbursement for Preliminary Engineering

- 140.401 Purpose.
- 140.402 Definitions.
- 140.403 Percentage rate reimbursement.
- 140.404 Procedures.

Subpart E—Federal-Aid Projects; State Legal Expenses—Contract Claims

- 140.501 Purpose.
- 140.502 Definition.
- 140.503 Reimbursable costs.
- 140.504 Documentary support.

Subpart F—Reimbursement for Bond Issue Projects

- 140.601 Purpose.
- 140.602 Requirements and conditions.
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- 140.604 Approval actions.
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- 140.607 Progress and final vouchers.
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Subpart G—Reimbursement for Employment of Public Employees on Federal Aid Projects

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- 140.701 Purpose.
- 140.702 Application.
- 140.703 Definitions.
- 140.704 Salaries and wages.
- 140.705 Overtime or compensatory leave in lieu of overtime.
- 140.706 Travel and transportation.
- 140.707 Annual leave, sick leave, paid holidays, military leave, jury leave.
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Subpart H—State Audit Expenses—Contract Costs

- 140.801 Purpose.
- 140.802 Policy.
- 140.803 Definitions.
- 140.804 Reimbursable costs.
- 140.805 Documentary support.

Subpart A—B [Reserved]

Subpart C—Percentage Reimbursement for Construction Engineering

AUTHORITY: 23 U.S.C. 120(h).

SOURCE: 39 FR 26410, July 19, 1974, unless otherwise noted.

§ 140.301 Purpose.

The purpose of this directive is to provide a simplified optional method for State highway departments to claim reimbursement for construction engineering and inspection costs on Federal-aid and other highway projects undertaken cooperatively with the Federal Highway Administration (FHWA).

§ 140.302 Definition.

For the purpose of this directive, the term "construction cost" means the actual cost of building a project and all expenses incidental thereto except for the costs of preliminary engineering, construction engineering, and rights-of-way.

§ 140.303 Billing.

(a) States may be reimbursed for construction engineering and inspection costs on the basis of an approved percentage of the participating construction cost in lieu of itemized actual costs of those items.

(b) The approved percentage rate shall be applicable to future projects and to current projects for which final vouchers have not been submitted by the States as of the date the percentage rate is approved.

(c) If a State desires to use a percentage rate, all claims from the State for construction engineering and inspection costs, except as noted in paragraph

3a, shall be submitted on the approved percentage rate.

§ 140.304 Request for and approval of percentage rate.

(a) A State desiring to take advantage of the simplified billing procedure shall submit to the Division Engineer of the FHWA, a request for approval of a rate which does not exceed the average reimbursable cost of construction engineering and inspection and which is not in excess of the rate limitations prescribed by section 121 of title 23.

(b) Upon receipt of the State's request, the Division Engineer shall arrange for an adequate examination of the State's records of Federal-aid projects completed during the preceding 12-month period to verify the percentage rate requested. Where records are not maintained to show the construction costs and costs of construction engineering on Federal-aid projects completed in the State over a period of 12 months, it will be satisfactory for the Division Engineer to base his verification of the requested rate on the comparison of the totals of construction and reimbursable construction engineering and inspection costs of a representative sample of projects completed by the State or counties within the preceding year. In determination of the percentage rate, proper weight shall be given to the volume of projects within the State financed from the four classes of Federal-aid funds, namely, primary, secondary, urban, and Interstate. The rate will be computed to the nearest 1/10 of one percent.

(c) A reevaluation of the percentage rate shall be made annually.

Subpart D—Percentage Reimbursement for Preliminary Engineering

AUTHORITY: 23 U.S.C. 120(h).

SOURCE: 39 FR 26410, July 19, 1974, unless otherwise noted.

§ 140.401 Purpose.

The purpose of this directive is to provide a simplified optional method for the State highway departments to claim reimbursement for preliminary engineering on Federal-aid projects.

§ 140.402 Definitions.

(a) Preliminary engineering—the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction thereunder, includ-

ing locating, surveying, designing, and related work.

(b) Construction cost—the actual cost of building a project, exclusive of costs of preliminary engineering, construction engineering and rights-of-way.

§ 140.403 Percentage rate reimbursement.

(a) States may be reimbursed for preliminary engineering costs on the basis of an approved percentage applied to total participating construction cost in lieu of actual preliminary engineering costs.

(b) The approved percentage rate shall be applicable to all claims presented within 1 year of the effective date of approval.

(c) Where outside engineers or consultants are utilized, contract approval shall be required for reimbursement of any claim.

§ 140.404 Procedures.

(a) The State shall submit a request to the FHWA Division Engineer for development of a percentage rate.

(b) The Division Engineer shall direct an audit of the State's records and the development of a rate for approval.

(c) The Regional Federal Highway Administrator shall approve the rate.

(d) A redetermination of the percentage rate shall be accomplished annually.

Subpart E—Federal-Aid Projects; State Legal Expenses—Contract Claims

AUTHORITY: 23 U.S.C. 315.

SOURCE: 39 FR 26411, July 19, 1974, unless otherwise noted.

§ 140.501 Purpose.

This regulation established the basis of eligibility for reimbursement of administrative settlement costs, and other legal expenses, including attorney salaries and fees, in the defense of contract claims on Federal-aid projects, including any Federal projects performed by a State under Federal-aid procedures.

§ 140.502 Definition.

Administrative Settlement Costs shall include the salary of a contracting officer or his representative and members of State boards of arbitration, appeals boards or similar tribunals, which are allocable to the findings and determination of contract claims, but shall not include expenditures for the establishment, maintenance, general administration, supervision, and other overhead of

such officials or entities, including the State highway department.

§ 140.503 Reimbursable costs.

(a) Federal-aid funds may participate on the same pro rata basis applicable to the project in the following costs which are related to the defense and settlement of Federal-aid contract claims, provided such costs are:

- (1) Actual incurred costs,
- (2) Directly allocable to a specific Federal-aid project,
- (3) Accrued subsequent to a notice of claim,
- (4) Supported by itemized records of time, and

(5) For the employment of special counsel for the review and defense of contract claims where recommended by the State Attorney General or legal counsel for the State highway department, and where approved in advance by the Division Engineer for the State, with the advice of the Regional Counsel.

(b) No reimbursement shall be made to the extent it is determined by the Federal Highway Administration, that there was negligence or wrongdoing of any kind by State officials with respect to the claim.

§ 140.504 Documentary support.

(a) The State's request for reimbursement of items of costs shall be accompanied by a statement, certified by the State's attorney, setting forth the nature of the claim and the outcome.

(b) Records and accounts evidencing the State control over costs or expenses shall be maintained. Where management needs do not require such records and accounts, a cost distribution or other auditable records shall be maintained.

(c) Travel and related transportation expenses shall be in accordance with State highway department policy and practices.

(d) Reimbursable costs shall be claimed in the voucher submission PR-20 or PR-21.

Subpart F—Reimbursement for Bond Issue Projects

AUTHORITY: 23 U.S.C. 122, 23 U.S.C. 315.

SOURCE: 39 FR 26411, July 19, 1974, unless otherwise noted.

§ 140.601 Purpose.

The purpose of this regulation is to prescribe policies and procedures for the use of Federal funds in aiding the States

in the retirement of the principal of bonds, pursuant to 23 U.S.C. 122.

§ 140.602 Requirements and conditions.

(a) Any State that shall use the proceeds of bonds issued by the State or political subdivisions of the State for the construction of projects on the Federal-aid primary or Interstate System, or extensions of any of the Federal-aid highway systems in urban areas, may claim payment of any portion of the sums apportioned to it for expenditures on such system to aid in the retirement of the principal of such bonds at their maturities, to the extent that the proceeds of such bonds have been actually expended in the construction of such projects.

(b) The Federal share payable cannot exceed the legal pro rata in effect at the time the original project agreement was executed covering a bond issue project.

(c) Deposits of reimbursements into State accounts to be used to pay off bonds may precede by not more than 60 days the scheduled rate of retirement of the bonds. This provision should not be construed as preventing a State from requesting approval for converting bond issue projects to regular funded projects at such time as is necessary to meet the requirements of reimbursement planning procedures.

(d) Federal funds are not eligible for payment into sinking funds created and maintained for the subsequent retirement of bonds.

(e) Bond issue projects have no application to the Federal-aid secondary highway system or to Federal funds authorized and apportioned for expenditure on said system, except in connection with the use of Federal-aid secondary or urban funds for improvement of extensions of the secondary system in urban areas, as provided by 23 U.S.C. 103(c).

(f) Highways constructed as bond issue projects shall be free from tolls of all kinds.

§ 140.603 Programs.

Programs covering projects to be financed from the proceeds of bonds, with separate listings of such projects to be financed from each fund, shall be prepared and submitted in the manner prescribed by the Federal-Aid Highway Program Manual Volume 6, Chapter 3, Section 2, Subsection 2. The programs shall be identified as "Bond Issue Projects—Interstate" or "Bond Issue Projects—Urban," etc., as the case may be.

Project designations shall be the same as for regular Federal-aid projects except that the prefix letter "B" for bond issue shall be used as the first letter of each project designation, e.g., "BI" or "BU."

§ 140.604 Approval actions.

(a) Authorizations to proceed with preliminary engineering and acquisition of rights-of-way shall be issued in the same manner as for regularly financed Federal-aid projects.

(b) Plans, specifications, and estimates shall be submitted in the same manner and in the same detail as for regularly financed Federal-aid projects. The State shall be notified of the approval of the plans, specifications and estimates, and shall be authorized in the usual manner.

(c) When the State is authorized to proceed with all or any phase of the work under a bond project, the project is to be identified as an E project and as such shall be subject to the appropriate reimbursement schedule for E projects, in accordance with the Federal-Aid Highway Program Manual Volume 6, Chapter 3, Section 2, Subsection 7.

(d) The concurrence in the award of contracts shall be in accordance with the Federal-Aid Highway Program Manual Volume 6, Chapter 4, Section 1, Subsection 6.

§ 140.605 Project agreements.

Project agreements, Form PR-2, shall be prepared and executed.

§ 140.606 Construction.

Construction shall be supervised by the State highway department in the same manner as for regularly financed Federal-aid projects. Engineers of the Federal Highway Administration (FHWA) will make construction inspections and reports in accordance with Volume 6, Chapter 4, Section 2, Subsection 8 of the Federal-Aid Highway Program Manual.

§ 140.607 Progress and final vouchers.

(a) Progress vouchers prepared in accordance with the Federal-Aid Highway Program Manual, Volume 1, Chapter 4, Section 6 may be submitted for the Federal share of bonds retired or about to be retired, the proceeds of which have actually been expended in the construction of the project subject to the conversion requirements set forth under paragraph 9.

(b) Upon completion of a bond issue project, a final voucher prepared in ac-

cordance with the Federal-Aid Highway Program Manual, Volume 1, Chapter 4, Section 6 shall be submitted by the State. After final review, the State will be advised as to the total cost and Federal fund participation for the project. Pending conversion action, approved final vouchers for bond issue projects shall be maintained in a separate file in the division office.

§ 140.608 Conversion from bond issue to funded project status.

(a) At such time as the State elects to apply available apportioned Federal-aid funds to the retirement of bonds, its claim shall be supported by appropriate certification as follows:

I hereby certify that the following bonds, -----, the proceeds of which have been actually expended in the construction of bond issue projects authorized by United States Code, Title 23, Section 122 have been retired on -----, or (2) mature and are scheduled for retirement on -----, or (3) are scheduled for retirement on -----, which is in advance of the maturity date of -----.

(b) The State's request for full conversion of a completed project(s) or partial conversion of an active or completed project(s) may be made by letter, inclusive of the appropriate certification as described in paragraph 9a giving reference to any progress payments received or the final voucher(s) previously submitted and approved in accordance with paragraph 7.

(c) Approval of the conversion action shall be at the level of delegated authority for approval of regular Federal-aid programs. Acceptance of the State's request and transmission of the voucher for payment shall constitute the approval action.

(d) The State's request for partial conversion of an active or completed bond issue project shall provide for (1) conversion to funded project status of the portion to be financed out of the unprogrammed balance of currently available apportioned funds, and (2) retention of the unfunded portion of the project in the bond program.

(e) Where the State's request involves the partial conversion of a completed bond issue project, payment of the Federal funds made available under the conversion action shall be accomplished through use of Form PR-20 prepared in the division office and appropriately cross-reference to the final voucher previously submitted and ap-

proved. The final voucher will be reduced by the amount of the approved reimbursement and retained in accordance with the provisions of paragraph 7.

(f) Upon receipt of the State's request for final conversion, the final voucher previously submitted shall be combined with the request and certification and processed for payment.

(g) Payment of the amount of Federal funds made available under the conversion action shall be subject to procedures covering converted E projects contained in Attachment 1, Volume 6, Chapter 3, Section 2, Subsection 7, Federal-Aid Highway Program Manual.

§ 140.609 Determination of bond requirement.

Division Engineers shall be responsible for the prompt review of the State's records to determine that bonds issued to finance the projects and for which reimbursement has been made are in fact retired pursuant to the State's certification required by paragraph 9a, and that such action is documented in the project file.

Subpart G—Reimbursement for Employment of Public Employees on Federal-Aid Projects.

AUTHORITY: 23 U.S.C. 315.

SOURCE: 39 FR 26412, July 19, 1974, unless otherwise noted.

§ 140.701 Purpose.

To prescribe policies and procedures governing the extent to which Federal funds may participate in the cost of salaries and wages and related labor costs, incurred by public forces of State highway departments, counties, cities, or other political subdivisions.

§ 140.702 Application.

The policies and procedures herein apply to all Federal-aid and other highway projects undertaken cooperatively with the Federal Highway Administration (FHWA) wherein force account labor is employed, except projects involving force account labor of railroads and public utilities.

§ 140.703 Definitions.

The following definitions apply for the purposes of this directive.

(a) **Preliminary Engineering**—the work of locating and designing, making surveys and maps, sinking test holes, making foundation investigations, preparing plans, specifications and estimates,

center line, right-of-way and incidental construction staking, to the extent such staking is necessary to review construction plans, and related general engineering preparatory to the letting of a contract for construction.

(b) **Construction Engineering**—the work of supervising construction activities, the inspection of construction and related mechanical aspects, e.g., staking as described in a. above together with those staking activities necessary for the State to control construction operations, testing of materials incorporated into construction, check shop drawings, and measurements for the preparation of progress and final estimates.

(c) **Acquisition of Rights-of-Way**—the preparation of right-of-way plans, the making of economic studies, and other related preliminary work, the appraisal for the purpose of parcel acquisition, the review of appraisals, the preparation for and/or trial of condemnation cases, the management of properties acquired, the furnishing of relocation advisory assistance, and necessary related labor expenses such as mapping and recording.

(d) **Highway Planning**—the work or orderly and continuing assembly and analysis of information about highways, including the history of highway development and their extent, dimensions and conditions, use, economic and social effects, costs, and future needs.

(e) **Research and Development**—the search for more complete knowledge of the basic characteristics of the geometry, traffic flow and safety, structural capabilities, economics, financing and administration of highway systems, and the evaluation and translation of the results of research.

(f) **State Legal Expenses—Contract Claims**—contract claims services related to the review and defense of project claims, as provided.

(g) **Miscellaneous Functions**—labor costs incurred in or related to project activities, e.g., advertising or the audit of subsidiary contracts which are properly attributable to highway projects but not subject to classification under any of the functions described above, and costs of labor, travel, and subsistence of State employees engaged in specific project activities.

§ 140.704 Salaries and wages.

(a) Subject to appropriate programming and authorization, Federal funds may participate in the cost of salaries

and wages at actual or average rates covering productive labor hours of public employees, excluding the administrative organization of the operating unit involved for all except § 140.703 (d) and (e), for periods of time actively or incidentally engaged in (1) preliminary engineering, (2) construction engineering, (3) acquisition of rights-of-way, (4) highway planning, (5) research and development, (6) State legal expenses—contract claims, and (7) miscellaneous functions.

(b) With regard to the highway planning unit and the research and development unit, Federal funds may participate in the costs of salaries and wages of the administrative organizations of these units in the ratio that the time spent on the participating portion of the work of the unit bears to the total working hours. Federal funds may participate in the costs of services rendered by employees generally classified as administrative only when such employees are assigned for short periods of time, to perform on a full-time basis the type of services described in paragraph 4a.

§ 140.705 Overtime or compensatory leave in lieu of overtime.

When earned on a project may be reimbursed to the extent they are determined to be a liability of the State or political subdivision.

§ 140.706 Travel and transportation.

(a) Federal funds may participate in the cost of commercial transportation, privately owned automobiles, and per diem or subsistence which is essential to the prosecution or project work.

(b) Reimbursement for use of privately owned automobiles, per diem or subsistence shall be consistent with overall reimbursement policy of the State or political subdivision.

§ 140.707 Annual leave, sick leave, paid holidays, military leave, and jury leave.

(a) Where the employer has established a standard procedure for allowing employees a specified number of days per annum of annual leave, sick leave, paid holidays, military leave, and jury leave, the cost of such leave which accrues to the credit of employees while working on Federal projects will be reimbursed to the extent that it is determined to be the liability of the employer.

(b) Computations of predetermined percentage rates to be applied to cur-

rent labor costs for recovery of annual leave, and cost of sick leave, paid holidays, military leave, or jury leave, may be based upon experience adjusted by anticipated known current year variations, recomputed periodically as appropriate to recover costs for the current year. Under this method, a clearing account or other generally accepted accounting procedure is a prerequisite to reimbursement. Such accounting procedure shall assure an equitable assignment of such costs to both Federal-aid and non-Federal-aid projects and provide accounting control of the actual and accrued liability.

§ 140.708 Social Security and/or retirement and other payroll benefits.

(a) Federal funds may participate in the cost of contributions for social security and/or retirement, hospitalization, and similar costs incident to employment, applicable to base salaries and wages of public employees engaged in work on Federal projects.

(b) Computation of percentage rates to be applied for recovery of costs incident to employment shall be based upon cost experience adjusted by anticipated known current year variations. Under this method, a clearing account or other generally accepted accounting procedure is a prerequisite to reimbursement. Such accounting procedure shall assure an equitable assignment of such costs to both Federal-aid and non-Federal-aid projects and provide accounting control of the actual and accrued liability.

Subpart H—State Audit Expense—Contract Costs

AUTHORITY: 23 U.S.C. 315.

SOURCE: 39 FR 28876, Aug. 12, 1974, unless otherwise noted.

§ 140.801 Purpose.

This regulation establishes (a) the State's responsibility for the audit of costs incurred by "third parties" pursuant to a State/claimant contract on Federal-aid and other highway projects undertaken cooperatively with the Federal Highway Administration (FHWA) and (b) the reimbursement criteria for Federal participation in audit expense so incurred.

§ 140.802 Policy.

(a) Where the source data and other supporting documentation are maintained by a third party, audit evaluations in accordance with the Federal-Aid

Highway Program Manual Volume 1, chapter 7, section 2 are needed to provide the desired assurance that the project costs are correct and proper. This responsibility also includes the audit of third party contracts where the records are located outside the State boundaries.

(b) These audits are to be performed in accordance with generally accepted auditing standards and applicable Federal reimbursement requirements. The State highway department may use other State and Federal audit organizations as well as licensed or certified public accounting firms to augment the State audit force. The FHWA's external audit function will provide this service only when arrangements cannot be made with other audit groups.

(c) The project-related costs of audits of third party contracts are eligible for Federal participation under the criteria set forth in § 140.804 of this regulation.

(d) Federal laws and regulations will govern the reimbursability of contract costs to the State. In those instances where Federal requirements are more restrictive than State requirements, the State will not include in their claim against Federal funds, any costs eligible under State reimbursement criteria but ineligible for Federal participation.

§ 140.803 Definitions.

(a) *Audit Activities.* As used herein the audit of costs is to be distinguished from voucher examinations undertaken as part of the payment procedure applicable to all types of claims, and also from internal audit activities involving the review and appraisal of the operations of the highway department, both of which categories fall within the general overhead activities to be absorbed by the State pursuant to 23 U.S.C. 302 and 23 CFR 1.11.

(b) *Third Parties.* As used herein are railroads, utilities, consultants, construction contractors, political subdivisions, universities, nonprofit organizations, and personnel and organizations engaged in right-of-way studies, planning, research, or related activities where the terms of a proposal or contract (including lump sum) necessitate audit.

(c) *State Personnel.* As used herein may be interpreted to include employees of another State or Federal agency where an appropriate arrangement has been made to complete the audit work on a specific contract.

§ 140.804 Reimbursable costs.

(a) Federal funds may be used to reimburse States for the following types of project-related costs when found to have been incurred and controlled under the conditions indicated:

(1) Salaries and wages paid or payable to State personnel, as defined in § 140.803 (c) for the time they are actually engaged in the conduct of an audit of costs incurred under contract or agreement entered into by the State incident to the requirements of an approved Federal-aid highway project, together with the time required for necessary travel and preparation for and completion of such audit work;

(2) Other costs of employment, including vacation and holiday pay, sick leave, hospitalization, termination pay, retirement, group health, accident insurance, and similar fringe benefits, directly applicable to such reimbursable salaries and wages as may be determined on the basis of paragraph (a)(1) above;

(3) Travel and transportation expenses incidental to such audit assignments as may be involved in determinations of costs under paragraph (a)(1) above; and

(4) An equitable proration of such types of costs specified above will be acceptable when costs are incurred in connection with an audit assignment involving more than one highway project.

(b) The costs of audit service performed by licensed or certified public accounting firms are reimbursable provided the contractual agreement between the State and accounting firm has been approved by the FHWA Division Engineer.

(c) Federal funds will participate in the expenses incurred under interagency audit service arrangements with other Federal agencies which have been coordinated with the FHWA.

§ 140.805 Documentary support.

(a) Reimbursement of such items of costs as provided for in this regulation is dependent upon the adequacy of controls exercised by the State over costs or expenses of the type specified. The records and accounts evidencing such control should be maintained in the normal course of operations of the department. However, where management needs do not require maintenance of records and accounts evidencing such control in the normal course of operations, a cost distribution or other auditable record which provides for a reasonable

method of allocating auditors total salaries and related expenses may be accepted as evidence of adequate control.

(b) Travel and related transportation expenses charged to project costs must be in accordance with State highway department established policy and practices which are consistently followed.

PARTS 141—159 [RESERVED]

PART 160—STATE FISCAL PROCEDURES AND REPORTS

Subpart A—Transfer of Federal-Aid Highway Funds

Sec.

- 160.101 Purpose.
- 160.102 Requirements and conditions.
- 160.103 Applicability.
- 160.104 Submission of request.

AUTHORITY: 23 U.S.C. 104, 315; 49 CFR 1.48(b).

SOURCE: 39 FR 26413, July 19, 1974, unless otherwise noted.

§ 160.101 Purpose.

The purpose of this subpart is to prescribe the procedures for transfer of funds under § 104 (c) and (d) of Title 23, United States Code, as amended by section 111 of the Federal-Aid Highway Act of 1973.

§ 160.102 Requirements and conditions.

(a) Total transfers from an apportionment may not decrease the original apportionment by more than 40 per centum.

(b) Total transfers to an apportionment may not increase the original apportionment by more than 40 per centum.

(c) Funds transferred to any apportionment are to be expended under the provisions of law governing the expenditure of the apportionment to which the transfer is made.

(d) Funds under project agreement will not be eligible for transfer.

(e) Transfers are to be requested by the State highway department and approved by the Governor of the State and the Secretary of Transportation as being in the public interest. Requests for transfer of funds apportioned in accordance with 23 U.S.C. 104(b) (6) and allocated to any urbanized area of 200,000 population or more under 23 U.S.C. 150 shall also be approved by the local officials of such urbanized area. Pursuant to existing delegations of authority, the Federal Highway Administrator will act for the Secretary in approving such requests.

§ 160.103 Applicability.

(a) Transfer provisions of 23 U.S.C. 104(c) are applicable to primary, secondary, rural primary and rural secondary funds.

(b) Transfer provisions of 23 U.S.C. 104(d) are applicable to urban extension, urban system and TOPICS funds.

§ 160.104 Submission of request.

The request for transfer of funds is to be addressed to the Division Engineer and forwarded through the regional office to the Washington office for approval, accompanied by the recommendations of the Division Engineer and Regional Federal Highway Administrator.

PARTS 161—169 [RESERVED]

PART 170—STATE CONTRACT ADMINISTRATION FOR OTHER THAN COMPETITIVELY BID CONTRACTS

Sec.

- 170.101 Purpose.
- 170.103 General.
- 170.105 State contracting procedures.
- 170.107 Cost principles.
- 170.109 Property management.
- 170.111 Access to records.

AUTHORITY: 23 U.S.C. 315, 49 C.F.R. 1.48(b).

SOURCE: 39 FR 36327, Oct. 9, 1974, unless otherwise noted.

§ 170.101 Purpose.

(a) The purpose of this part is to prescribe procedures to be followed by the State highway agencies, in the award and administration of contracts other than those awarded by means of competitive bidding.

(b) Specific program policy as set forth in Title 23, Code of Federal Regulations covering the various program areas is also to be followed with respect to individual requirements affecting the overall administration of contracts in each area of work, as appropriate.

§ 170.103 General.

(a) The State highway agency, through utilization of its own combination of staff facilities and expertise, has the responsibility for employing whatever form of organization and management techniques that may be necessary to assure proper and efficient administration of contracts. In addition to any necessary technical review and evaluation, the appropriate use of the audit function for proposal evaluations and contract cost auditing is considered an inherent part of this responsibility.

(b) The term "contract" as used herein includes contracts with railroads, utilities, consultants, construction contractors, political subdivisions, universities, nonprofit organizations and organizations engaged in right-of-way studies, planning, research, development or related activities which are awarded on a basis other than competitive bidding.

§ 170.105 State contracting procedures.

(a) The State highway agency shall establish procedures for the selection of contractors which are consistent with the policy and procedure requirements applicable to the program area involved. Before a contract is awarded, the State highway agency shall determine and document in its files that:

(1) The selected contractor is qualified professionally and is financially capable to perform the services required.

(2) The contractor will have properly trained and experienced personnel available to perform the services within the time prescribed.

(3) The contractor has been apprised of all applicable technical work requirements and administrative controls including those of the Federal Highway Administration (FHWA); and

(4) The contract proposal has been subjected to technical and audit evaluations, as appropriate, and the results of these evaluations were considered in the contract negotiations.

(b) The prospective contractor's contract cost or price proposal shall contain a breakdown of the estimate for performing the work to include the costs of material, direct salary, payroll additives, other direct costs, indirect costs and profit. As a minimum, the State highway agency shall subject each cost proposal which exceeds \$50,000 to an audit evaluation which will provide the basic data needed to determine the propriety of the proposed amounts.

(c) On contracts not to be awarded on a firm fixed price basis and where the proposal or estimate of total costs and fee exceeds \$50,000 as a minimum, the State highway agency shall have audit assurance as to the adequacy of the prospective contractor's system to segregate and accumulate reasonable, allocable and allowable costs for the proposed contract.

(d) The State highway agency shall establish procedures for effectively monitoring contracts in progress, including

technical and audit evaluations as may be necessary.

(e) Procedures shall be established for determining and documenting adequate contract performance and the propriety of contract claims prior to final settlement of all contracts. These procedures shall provide for any necessary technical evaluations of work performed and final audits where necessary to determine total allowable contract costs under contracts and agreements which are not firm fixed price.

§ 170.107 Cost principles.

(a) The State highway agency shall establish cost principles for use in determining the allowability of individual items of costs. These cost principles shall be appropriately identified or referenced in each contractual document.

(b) The cost principles established by the State highway agency shall consider the applicable provisions of governing policy and procedural directives and the contract cost principles and procedures set forth in Part 1-15 of the Federal Procurement Regulations, (41 CFR, Part 1-15) as appropriate. When specific FHWA reimbursement policy differs from the Federal Procurement Regulations, the FHWA policy shall apply.

§ 170.109 Property management.

The State highway agency shall establish procedures relating to the control, utilization and disposition of property or equipment acquired under such contracts. These procedures shall also provide for appropriate credits for any residual values.

§ 170.111 Access to records.

(a) The contracts shall provide that contractors and any subcontractors are to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for 3 years from the date of final payment under the contract for inspection by the State highway agency, FHWA or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

(b) Contractors' records supporting cost proposals shall also be available for review by authorized representatives of the State and Federal Government, and if such data is used to support a contract

entered into with the State highway agency, it shall be subject to the 3-year retention period set forth in paragraph (a) of this section.

PARTS 171—189 [RESERVED]

PART 190—INCENTIVE ($\frac{1}{2}$ PERCENT BONUS) PAYMENTS FOR CONTROLLING OUTDOOR ADVERTISING ON THE INTERSTATE SYSTEM

Sec.

190.1 Purpose.

190.2 Agreement to control advertising.

190.3 Bonus project claims.

190.4 Processing of claims.

AUTHORITY: 23 U.S.C. 131(j); 49 CFR 1.48(b).

SOURCE: 39 FR 13880, Apr. 18, 1974, unless otherwise noted.

§ 190.1 Purpose.

The purpose of this part is to prescribe project procedures for the incentive payment authorized by 23 U.S.C. 131(j).

§ 190.2 Agreement to control advertising.

To qualify for the bonus payment, a State must, not later than June 30, 1965, have entered into an agreement with the Secretary to control outdoor advertising and must have fulfilled its obligations under such agreement.

§ 190.3 Bonus project claims.

(a) Following execution of the advertising control agreement and compliance with all requirements of the agreement and of this Part, the State may claim payment of the $\frac{1}{2}$ percent bonus by submission of vouchers (available at the division office) to the Federal Highway Administration (FHWA) division office.

(b) Costs upon which the bonus payment is to be computed must be for projects or portions thereof which meet the requirements of the national standards and the advertising control agreement and for which (1) the section of highway on which the project is located has been opened to traffic, and (2) final payment has been made. A bonus project may cover an individual Interstate project, or a part thereof, or a combination of Interstate projects, on a section of an Interstate route.

(c) No claim shall be submitted on any bonus project until all required advertising controls have been effected on said project and any nonconforming advertising signs in controlled areas have been removed therefrom. The sig-

nature of the division engineer on each voucher will be accepted as a certification that this has been verified.

(d) Each bonus project voucher submitted by the State shall be supported by accompanying or previously submitted strip maps of adequate scale and in sufficient detail to identify the limits of the areas within which advertising controls have been established. These maps may be suitably annotated copies of the right-of-way strip maps which supported either the original right-of-way acquisition or the separate acquisition of the advertising rights. Where advertising rights have been acquired under the power of eminent domain, or advertising control has been achieved under the police power, the physical limits of such advertising rights or controls should be delineated. Other suitable maps or plans may be used at the discretion of the division engineer.

(e) Each bonus project voucher submitted by the State shall be supported also by two copies of form FHWA-1175 (available at the division office) for use of the Washington Headquarters. In addition, a copy of form FHWA-1175 shall be attached to each voucher copy required by the division office.

(f) The eligible system mileage to be shown for a bonus project is the system mileage on which advertising controls are in effect for the bonus project. The eligible system mileage reported on subsequent bonus projects on the same Interstate route section should cover only the additional system mileage not reported on previous bonus projects. Total cost and Federal fund amounts are to be shown covering final voucher amounts for Interstate supporting projects financed under provisions of the Federal-Aid Highway Act of 1956 and subsequent Acts. Eligible project cost is the total participating cost (State and Federal share of approved PE, ROW, and Construction) exclusive of any ineligible costs such as costs of acquiring advertising rights, costs associated with ineligible sections, etc., for those supporting projects involved in the section on which the bonus claim is based. The amount of the bonus payment is to be based upon the eligible total costs of the supporting projects included in each claim.

(g) Cost records used to develop eligible costs will be kept in such manner as to expedite FHWA audit.

(h) Progress vouchers covering claims for payment of $\frac{1}{2}$ percent bonus funds

applicable to route sections on which additional ½ percent bonus payments are to be claimed upon completion of additional improvements are to be so identified, and the final claim for each route section is to be identified as the final voucher. Identification as to progress or final voucher shall be shown on all copies of each voucher submission.

§ 190.4 Processing of claims.

Audited and approved vouchers with attached form FHWA-1175 shall be forwarded to the regional office for submission to the Finance Division, Washington Headquarters, for payment. The associated strip maps shall be retained with the division office copies of the vouchers.

PARTS 191—199 [RESERVED]

SUBCHAPTER C—CIVIL RIGHTS

PARTS 200—249 [RESERVED]

SUBCHAPTER D—NATIONAL HIGHWAY INSTITUTE

PARTS 250—259 [RESERVED]

PART 260—EDUCATION AND TRAINING PROGRAMS

SOURCE: 39 FR 34521, Sept. 26, 1974, unless otherwise noted.

Subpart A—Highway Safety

Subpart A—Highway Safety

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- 260.101 Purpose.
- 260.103 Objectives.
- 260.105 Eligibility.
- 260.107 Selection.
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- 260.115 Application procedures.

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- 260.201 Purpose.
- 260.203 Objectives.
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- 260.207 Eligibility.
- 260.209 Selection.
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- 260.303 Objectives.
- 260.305 Eligibility.
- 260.307 Selection.
- 260.309 Responsibilities of educational institutions.
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Subpart D—State Education and Training Programs

- 260.401 Purpose.
- 260.403 Policy.
- 260.405 Application procedures.
- 260.407 Approval criteria.
- 260.409 Funding and reimbursement.
- 260.411 Prohibition against discrimination.

AUTHORITY: 23 U.S.C. 307(a), 315, 321, and 403; 49 CFR 1.48(b) (34), (35), and (36).

§ 260.101 Purpose.

The purpose of this subpart is to establish the eligibility requirements, and selection criteria for the Federal Highway Administration (FHWA) Fellowship Program in Highway Safety as administered by the National Highway Institute pursuant to sections 307(a), 315, 321, and 403, of title 23, United States Code. This subpart also provides information relative to the application process.

§ 260.103 Objectives.

(a) The objective of the fellowship program is to assist State and local agencies in developing the expert manpower needed for the implementation of their highway safety programs and to assist in the development of more effective safety programs at all levels of Government.

(b) To meet its objective the program provides 9 to 12 months of graduate study, normally beginning with the fall term, to enhance the candidates' contributions in the field of highway safety.

§ 260.105 Eligibility.

(a) A candidate must have earned a Bachelor's or comparable college level degree in a highway-related discipline prior to beginning advanced study under this program.

(b) Preference will be given to candidates who are presently employed by State or local transportation agencies in the technical and/or administrative aspects of highway safety or traffic engineering. Candidates who are students with job commitments to work in the field

of highway safety for State and local highway agencies are eligible. Faculty members presently involved in teaching highway safety and traffic engineering and who, by virtue of their positions, are involved in State and local safety programs are eligible.

(c) Candidates must submit evidence of acceptance, or probable acceptance, for full-time advanced study in highway safety and design, and traffic engineering or safety management courses in schools offering comprehensive programs that serve to promote and advance highway safety. Evidence of probable acceptance may be a letter from the department chairman, graduate school official, or other authorized person.

(d) Candidates must agree to work in public service with State or local highway agencies in the field of highway safety or, in the case of faculty members, with educational institutions teaching courses in highway safety, for at least 3 years after completing the fellowship study period. Fellowship recipients must agree to respond to brief questionnaires during the study period and annually during the 3 years following completion of the study.

(e) Candidates must enter into agreement to accept no other fellowship or scholarship assistance concurrent with the FHWA grant. Recipients may accept salary or wages, whether through part-time assistantships or for any part-time work performed, concurrent with the FHWA grant. They may also receive benefits under programs administered by the Veterans Administration.

(f) Candidates may not profit financially from FHWA fellowships. Specifically, recipients who maintain full-time employment may not accept those portions of the grants that exceed their direct educational expenses. Direct expenses include tuition, books, entrance fees, and cost of expendable supplies such as paper and notebooks. Specifically excluded from direct expenses are living stipends and special equipment including, but not limited to, calculators.

(g) Candidates must be citizens, or must declare their intent to become citizens, of the United States.

§ 260.107 Selection.

(a) Candidates will be rated by a Selection Panel appointed by the Director of the National Highway Institute. Members of the panel will represent the

highway safety interests of Government, industry, and the academic community.

(b) Candidates, including otherwise qualified handicapped individuals, will be rated without regard to their race, color, sex, national origin, or handicap.

(c) The main factors to be considered by the panel will be:

(1) Relevant experience;

(2) Academic and professional achievements;

(3) Relevance of a candidate's study program to the objectives of the fellowship program;

(4) Candidate's potential to contribute to a State or local highway safety program.

(d) Using ratings given by the Selection Panel, the Director of the National Highway Institute will select candidates for awards and designate alternates.

§ 260.109 Responsibilities of educational institutions.

(a) The college or university chosen by the fellowship recipient shall enter into an appropriate agreement with the Federal Highway Administration providing for the administration of the grant by the college or university.

(b) The college or university chosen by the fellowship recipient shall designate a faculty advisor prior to the commitment of funds by the FHWA. The faculty advisor will be requested to submit reports of the recipient's study programs following the completion of each study period.

§ 260.111 Responsibilities of employing agencies.

(a) A candidate's employing agency is responsible for furnishing statements concerning the relevancy of the candidate's study to agency requirements.

(b) The employing agency is encouraged to give favorable consideration to the request of a candidate for educational leave and salary support for the study period to facilitate the candidate's application.

§ 260.113 Equal opportunity.

(a) Consistent with the provisions of Title VI of the Civil Rights Act of 1964, the Title VI Assurances executed by each State, section 324 of title 23, U.S.C., and section 794 of title 29, U.S.C., no applicant, including otherwise qualified handicapped individuals, shall on the grounds of race, color, sex, national origin, or handicap, be excluded from participation in, be denied benefits of, or be

otherwise subjected to discrimination under this program.

(b) State agencies are encouraged to make information on this program available to all eligible employees, including otherwise qualified handicapped individuals, so as to assure nondiscrimination on the grounds of race, color, sex, national origin, or handicap.

§ 260.115 Application procedures.

(a) Application forms may be obtained from FHWA regional and division offices, State highway departments, and Governor's Highway Safety Representatives, and from colleges and universities. Forms may also be obtained from the National Highway Institute (NHI-6), Federal Highway Administration, Washington, D.C. 20590.

(b) Applications should be sent directly to the National Highway Institute so as to arrive by December 31 of the year preceding that in which the study is to begin.

(c) Agencies that process their employees' applications should submit the applications to the Institute along with appropriate endorsements.

(d) Questions relative to the program may be directed to the University and Industry Programs Officer, National Highway Institute (NHI-6), Federal Highway Administration, Washington, D.C. 20590.

Subpart B—Highway Transportation Research and Education

§ 260.201 Purpose.

The purpose of this subpart is to establish the eligibility requirements and selection criteria for the Federal Highway Administration (FHWA) Fellowship Program in Highway Transportation Research and Education as administered by the National Highway Institute pursuant to sections 307(a), 315 and 321 of title 23, United States Code. This subpart also provides information relative to the application process.

§ 260.203 Objectives.

(a) A program objective is to provide 9 to 12 months of graduate level study and/or research normally beginning with the fall term in highway transportation related fields.

(b) A corollary objective is to encourage free and unstructured inquiry into problems in highway transportation and its interface with other transportation modes and its relationship to the community.

(c) The overall objective of the fellowship program is to assist State and local agencies by enabling their employees to develop expertise in disciplines where shortages of skills exist and to thereby enhance their contributions to the agencies' transportation programs.

§ 260.205 Scope.

Among the identified educational and training needs in highway transportation is the need for professionals in transportation to gain a better understanding of other disciplines. A corollary need is for individuals trained in other disciplines and working in highway program areas to receive training and education in highway transportation. Such a capability, for example, enables the design engineer who is trained in acoustics to develop expressway designs with a more adequate consideration for noise abatement. Some examples of emphasis areas that lend themselves to cross-disciplinary research and education programs are meteorology, wildlife biology, air and water quality, noise abatement, urban transportation planning, economics, sociology, and transit system planning and management.

§ 206.207 Eligibility.

(a) A candidate must have earned a Bachelor's or comparable college level degree in a highway related discipline prior to beginning advanced study under this program. The degree may be in engineering or a related discipline including, but not limited to, economics, sociology, public administration, and public administration, and biology.

(b) Preference will be given to candidates who are presently employed by State or local transportation agencies. Candidates who are students with job commitments to work in the field of highway transportation for State or local highway agencies are eligible.

(c) A candidate who proposes to pursue independent study or research must furnish evidence that a suitable topic has been identified in cooperation with appropriate faculty members. A description of the research topic must be provided.

(d) Candidates must submit evidence of acceptance or probable acceptance for full-time advanced study in schools offering opportunities for research and study in highway transportation or related fields. Evidence of probable acceptance may be a letter from the depart-

ment chairman, graduate school official, or other authorized persons.

(e) Candidates must agree to work in public service with State or local agencies in the field of highway transportation for at least 3 years after completing the fellowship study period. Fellowship recipients must agree to respond to brief questionnaires during the study period and annually during the 3 years following completion of the study.

(f) Candidates must enter into agreement to accept no other fellowship or scholarship assistance concurrent with the FHWA grant. Recipients may accept salary or wages whether through part-time assistantships or for any part-time work performed concurrent with the FHWA grant. They may also receive benefits under programs administered by the Veterans Administration.

(g) Candidates may not profit financially from FHWA fellowships. Specifically, recipients who maintain full-time employment may not accept those portions of the grants that exceed their direct educational expenses. Direct expenses include tuition, books, entrance fees, and costs of expendable supplies such as paper and notebooks. Specifically excluded from direct expenses are living stipends and special equipment including, but not limited to, calculators.

(h) Candidates must be citizens, or must declare their intent to become citizens, of the United States.

§ 260.209 Selection.

(a) Candidates will be rated by a Selection Panel appointed by the Director of the National Highway Institute. Members of the panel will represent the highway transportation interests of Government, industry, and the academic community.

(b) Candidates, including otherwise qualified handicapped individuals, will be rated without regard to their race, color, sex, national origin, or handicap.

(c) The main factors to be considered by the panel will be:

(1) Relevant experience,
(2) Academic and professional achievements,

(3) Relevance of a candidate's study program to the objectives of the fellowship program.

(4) Candidate's potential to contribute to a State or local highway transportation program.

(d) Using ratings given by the selection panel, the Director of the National

Highway Institute will select candidates for award and designate alternates.

§ 260.211 Responsibilities of educational institutions.

(a) The college or university chosen by the fellowship recipient shall enter into an appropriate agreement with the Federal Highway Administration providing for the administration of the grant by the college or university.

(b) The college or university chosen by the fellowship recipient shall designate a faculty advisor prior to commitment of funds by the FHWA. The faculty advisor will be requested to submit reports of the recipient's study progress following the completion of each study period.

§ 260.213 Responsibilities of employing agencies.

(a) A candidate's employing agency is responsible for furnishing statements concerning the relevancy of the candidate's study to agency requirements.

(b) The employing agency is encouraged to give favorable consideration to the request of a candidate for educational leave and salary support for the study period to facilitate the candidate's application.

§ 260.215 Equal opportunity.

(a) Consistent with the provisions of Title VI of the Civil Rights Act of 1964, the Title VI Assurances executed by each State, section 324 of title 23, U.S.C., and section 794 of title 29, U.S.C., no applicant, including otherwise qualified handicapped individuals, shall on the grounds of race, color, sex, national origin, or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under this program.

(b) State agencies are encouraged to make information on this program available to all eligible employees, including otherwise qualified handicapped individuals, so as to assure nondiscrimination on the grounds of race, color, sex, national origin, or handicap.

§ 260.217 Application procedures.

(a) Application forms may be obtained from the FHWA regional and division offices, State highway departments, and from colleges and universities. Forms may also be obtained from the National Highway Institute (HHI-6), Federal Highway Administration, Washington, D.C. 20590.

(b) Applications should be sent directly to the National Highway Institute so as to arrive by December 31 of the year preceding that in which the study is to begin.

(c) Agencies that process their employees' applications should submit the applications to the Institute along with appropriate endorsements.

(d) Questions relative to the program may be directed to the University and Industry Programs Officer, National Highway Institute (HHI-6), Federal Highway Administration, Washington, D.C. 20590.

Subpart C—Highway Technology

§ 260.301 Purpose.

The purpose of this subpart is to establish the eligibility requirements, and selection criteria for the Federal Highway Administration (FHWA) Scholarship Program in Highway Technology as administered by the National Highway Institute pursuant to sections 307(a), 315 and 321 of title 23, United States Code. This subpart also provides information relative to the application process.

§ 260.303 Objectives.

(a) The objective of the scholarship program is to assist State and local agencies and the FHWA in developing the technical manpower needed for the implementation of their highway programs and to assist in the development of more effective transportation programs at all levels of Government.

(b) To meet its objective the program provides 9 to 12 months of post secondary study normally beginning with the fall term to enhance the candidates' contributions in the field of highway transportation.

§ 260.305 Eligibility.

(a) Preference will be given to candidates who are presently employed by the FHWA and by State or local highway agencies. Candidates who are students with job commitments to work in the field of highway transportation for State and local highway agencies are eligible.

(b) Candidates must submit evidence of their acceptance, or probable acceptance, for full-time study in programs that will enhance their contribution to their employers. Evidence of probable acceptance may be a letter from the department chairman or other school official.

(c) Candidates must agree to work in public service with a highway agency for at least 3 years after completing the scholarship study period. Scholarship recipients must agree to respond to brief questionnaires during the study period and annually during the 3 years following completion of the study.

(d) Candidates must enter into agreement to accept no other fellowship or scholarship assistance concurrent with the FHWA grant. Recipients may accept salary or wages whether through part-time assistantships or for any part-time work performed concurrent with the FHWA grant. They may also receive benefits under programs administered by the Veterans Administration.

(e) Candidates may not profit financially from FHWA Scholarships. Specifically, recipients who maintain full-time employment may not accept those portions of the grants that exceed their direct educational expenses. Direct expenses include tuition, books, entrance fees, and costs of expendable supplies such as paper and notebooks. Specifically excluded from direct expenses are living stipends and special equipment including, but not limited to, calculators.

(f) Candidates must be citizens or must declare their intent to become citizens of the United States.

§ 260.307 Selection.

(a) Candidates will be rated by a Selection Panel appointed by the Director of the National Highway Institute. Members of the panel will represent the transportation interests of Government, industry, and the academic community.

(b) Candidates, including otherwise qualified handicapped individuals, will be rated without regard to their race, color, sex, national origin, or handicap.

(c) The main factors to be considered by the panel will be:

(1) Relevant experience;

(2) Academic and technical achievements;

(3) Relevance of a candidate's study program to the objectives of the scholarship program.

(4) Candidate's potential to contribute to a Federal, State, or local highway program.

(d) Using ratings given by the Selection Panel, the Director of the National Highway Institute will select candidates for awards and designate alternates.

§ 260.309 Responsibilities of educational institutions.

(a) The college or university chosen by the scholarship recipient shall enter into an appropriate agreement with the Federal Highway Administration providing for the administration of the grant by the college or university.

(b) The college or university chosen by the fellowship recipient shall designate a faculty advisor prior to the commitment of funds by the FHWA. The faculty advisor will be requested to submit reports of the recipient's study progress following the completion of each study period.

§ 260.311 Responsibilities of employing agencies.

(a) A candidate's employing agency is responsible for furnishing statements concerning the relevancy of the candidate's study to agency requirements.

(b) The employing agency is encouraged to give favorable consideration to the request of a candidate for educational leave and salary support for the study period to facilitate the candidate's application.

§ 260.313 Equal opportunity.

(a) Consistent with the provisions of Title VI of the Civil Rights Act of 1964, the Title VI Assurances executed by each State, section 324 of title 23, U.S.C., and section 794 of title 29, U.S.C., no applicant, including otherwise qualified handicapped individuals, shall on the grounds of race, color, sex, national origin, or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under this program.

(b) State agencies are encouraged to make information on this program available to all eligible employees, including otherwise qualified handicapped individuals, so as to assure nondiscrimination on the grounds of race, color, sex, national origin, or handicap.

§ 260.315 Application procedures.

(a) Application forms may be obtained from FHWA regional and division offices, State highway departments, and Governor's Highway Safety Representatives, and from colleges and universities. Forms may also be obtained from the National Highway Institute (HHI-6), Federal Highway Administration, Washington, D.C. 20590.

(b) Applications should be sent directly to the National Highway Institute so as

to arrive by December 31 of the year preceding that in which the study is to begin.

(c) Individuals from State and local agencies should send their applications directly to the National Highway Institute.

(d) Agencies that process their employees' applications should submit the applications to the Institute along with appropriate endorsements.

(e) Applications from Federal Highway Administration employees should be forwarded by Regional Administrators or Office Directors along with Forms 819, to the National Highway Institute through the Washington Office of Personnel and Training.

(f) Questions relative to the program may be directed to the University and Industry Programs Officer, National Highway Institute (HHI-6), Federal Highway Administration, Washington, D.C. 20590.

Subpart D—State Education and Training Programs

SOURCE: 39 FR 35141, Sept. 30, 1974, unless otherwise noted.

§ 260.401 Purpose.

The purpose of this subpart is to prescribe policy and implement procedures for the administration of Federal-aid funds for inservice education and training of State and local highway department employees.

§ 260.403 Policy.

It is the policy of the Federal Highway Administration to encourage the States to fully utilize the authority contained in 23 U.S.C. 321(b) and 321(c) to provide continuing education of State and local employees engaged or to be engaged in Federal-aid highway work.

§ 260.405 Application procedures.

(a) The State in making applications for education and training funds is encouraged to establish a program, for the fiscal year, outlining the use of such funds.

(b) Application for Federal-aid funds to be used for educational and training activities must be made to the Division Engineer in one of the following ways:

(1) The State, having established its education and training goals, may submit Forms PR-1, "Federal-Aid Program Data", for each class of funds to be utilized and Forms FHWA-1421, "Request for Use of Federal-Aid Highway Funds for Individual Education of Train-

ing" or FHWA-1422, "Request for Use of Federal-Aid Highway Funds for Group Education or Training" at the beginning of the fiscal year; or

(2) The State, having some educational and training goals but not desiring to specify individual programs, may submit Forms PR-1 for each class of funds to be utilized at the beginning of the fiscal year and Forms FHWA-1421 or FHWA-1422 on an individual basis throughout the year as the need for education and training activities arise; or

(3) The State may submit Forms PR-1 for each class of funds to be utilized and Forms FHWA-1421 or FHWA-1422 throughout the year as the need for education and training programs arise.

§ 260.407 Approval criteria.

(a) Subject to the availability of funds, as determined by the Division Engineer, the following criteria shall be observed by the Division Engineer in determining whether to approve each separate course or training proposal:

(1) The existence of a student-instructor relationship in which a planned routine of instruction will be followed training objectives.

(2) The existence of a training environment that will accomplish the training objectives,

(3) The existence of a program or schedule of planned activity to be followed.

(4) Assurance that Federal fund participation in the cost of the training will

not exceed 70 percent of the cost of tuition or other direct education expenses, which expenses shall not include travel, subsistence or salaries of the trainees.

(b) The Division Engineer's approval, as indicated on the submitted forms, shall constitute his authorization to proceed with the requested training.

§ 260.409 Funding and reimbursement.

(a) Education and training funds are made available from Federal-aid funds which are designated to meet specified State needs. These classes of funds, and amounts made available from each class for education and training, are reflected by apportionment data distributed by the FHWA.

(b) Established Federal-aid reimbursement procedures will be followed by the division and State offices, including execution of a Federal-aid project agreement, FHWA Form PR-2.

§ 260.411 Prohibition against discrimination.

The Civil Rights Act of 1964 (43 U.S.C. 2000d-2000d-4), the U.S. Department of Transportation implementing regulations (49 CFR Part 21), and the State assurances executed pursuant thereto are applicable to all activities receiving financial assistance through the Federal Highway Administration.

PARTS 261—399 [RESERVED]

SUBCHAPTER E—PLANNING

PARTS 400—419 [RESERVED]

PART 420—PROGRAM MANAGEMENT AND COORDINATION

Subpart A—Highway Planning and Research and Development—Programing of Funds

- Sec.
- 420.101 Purpose.
- 420.102 Definitions.
- 420.103 Policy.
- 420.104 Fiscal procedures.
- 420.105 Programing procedures.
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Subpart B—Highway Planning and Research and Development—Contracts

- 420.201 Purpose and Application.
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- 420.206 Alternate procedure.

Appendix 1 Certification of contractor; certification of State Highway agency.

Appendix 2 Notice to contractors: compliance with Title VI of the Civil Rights Act of 1964 for Federal-aid contracts.

Subpart A—Highway Planning and Research and Development—Programing of Funds

Authority: 23 U.S.C. 104, 307, and 315; and 49 CFR 1.48(b).

Source: 39 FR 36472, Oct. 10, 1974, unless otherwise noted.

§ 420.101 Purpose.

The purpose of this subpart is to prescribe Federal Highway Administration (FHWA) policies and procedures related to programing and authorization of highway planning and research and de-

velopment projects undertaken with Federal-aid funds in accordance with 23 U.S.C. 104(f) and 307(c), as amended. Procedures for allocating and matching of Metropolitan planning funds authorized under 23 U.S.C. 104(f)(1) (PL funds) and information regarding programming procedures for these funds that are available specifically to designated Metropolitan Planning Organizations (MPO) are also discussed in the Federal-Aid Highway Program Manual.¹

§ 420.102 Definitions.

(a) **Class of Fund**—Refers to each of the several Federal-aid funds in 23 U.S.C. 104(b) which provide the source of the 1½ percent funds authorized under 23 U.S.C. 307(c)(2) (HPR funds) and the optional one-half percent funds authorized under 23 U.S.C. 307(c)(3) (PR funds).

(b) **Type of Fund**—Refers to HPR, PR and PL funds.

(c) **Annual HP&R Work Program**—Refers to the total highway planning and research and development effort described in an annual statement of proposed work and estimated cost.

§ 420.103 Policy.

(a) HPR and PL funds shall each be administered as a single fund.

(b) PR funds shall be administered as a single fund, but the identity of such funds as primary, secondary, or urban shall be preserved.

(c) Under authority of 23 U.S.C. 104(f)(3) and pursuant to the Secretary's delegation of authority in 49 CFR 1.48(b)(3), the Federal Highway Administrator has determined that a matching ratio other than that set forth in 23 U.S.C. 120 be established; and accordingly the Federal share payable on account of work performed using PL funds shall not be less than 80 percent.

(d) The State highway agency (SHA) shall have primary responsibility for administering PL funds.

[39 FR 36472, Oct. 10, 1974, as amended at 40 FR 10951, Mar. 10, 1975]

§ 420.104 Fiscal procedures.

(a) Upon receipt of notice of apportionment of Federal-aid funds for each fiscal year, the SHA shall give notice to the MPO of the amount of Federal funds to be made available to that organiza-

tion according to the approved distribution formula (Volume 4, Chapter 4, section 7, paragraph 3) for that State.

(b) The SHA shall be responsible for identifying programed amounts, expenditures, and unprogramed balances of PL funds for each designated MPO.

§ 420.105 Programing procedures.

PL funds and HPR funds are each administered as a single fund with separate programing documents required for each.

§ 420.106 Authorization procedures.

(a) The approval of the HP&R work program and subsequent authorization to the SHA to proceed with either the Part I or Part II portion of a work program in Stage 2 will establish the obligation of Federal funds.

(b) The project agreement (PR-2) may be executed when the SHA has been authorized to proceed with the work program in whole or in part. However, in the event the project agreement is executed for only part of the work program, the project agreement shall be amended at such time as the SHA is authorized to proceed with the remaining part and when it has been advanced to Stage 2.

Subpart B—Highway Planning and Research and Development—Contracts

AUTHORITY: 23 U.S.C. 104(f), 302(a), 307(c), 315; 49 CFR 1.48(b).

SOURCE: 39 FR 40946, Nov. 22, 1974, unless otherwise noted.

§ 420.201 Purpose and application.

(a) The purpose of this subpart is to set forth policies and procedures regarding basic items to be included, as appropriate, in contracts between a State highway agency (SHA) and consultants, educational and other nonprofit organizations, other public agencies, quasi-governmental groups, and individuals to carry out research and development or planning studies financed in whole or in part with Federal-aid highway planning and research funds, as made available under 23 U.S.C. 104(f) and 307(c).

(b) These provisions also apply to contracts for planning or research and development studies between county, city, and regional quasi-governmental planning groups and any other party when Federal-aid highway planning and research funds administered by the SHA are to be utilized. Nothing herein shall relieve the SHA of its responsibilities under the Federal-aid laws and regula-

¹ The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR, Part 7, Appendix D.

tions for the work to be performed under contracts entered into by said parties.

§ 420.202 Definitions.

The following definitions apply for the purpose of this subpart.

(a) *Contract*. The legal instrument defining the rights and obligations of the signatory parties.

(b) *Statement of work*. A brief description of the work or services to be performed by the contractor, describing the limits to which the work or services will be carried, and the methods to be employed. This statement should also specify functions to be performed by the SHA, local agency, or any other party bound under the contract.

§ 420.203 Procedures.

(a) These procedures apply to highway planning, research and development contracts except those with Metropolitan Planning Organization (MPO) covering work to carry out the requirements of 23 U.S.C. 134.

(1) Proposed contracts shall be submitted for Federal Highway Administration (FHWA) approval prior to execution in accordance with the following:

(i) When the estimated contract amount of \$50,000 or less, the SHA may, upon FHWA approval of the statement of work, execute a contract to perform the required work without further FHWA approval.

(ii) When the estimated contract amount is greater than \$50,000 but less than \$500,000, and the SHA elects to follow the alternate procedure outlined in § 420.206, the SHA may, upon FHWA approval of the statement of work, execute a contract to perform the required work without further FHWA approval.

(iii) When the estimated contract amount is greater than \$50,000, and the SHA elects not to use the alternate procedure, or if the estimated contract cost is \$500,000 or greater, the statement of work and the contract shall be approved by the FHWA prior to execution.

(2) SHA requests for approval of the statement of work under paragraph (a) (1) of this § 420.203 shall be adequately supported. Among items to be included are:

- (i) The need for the study;
- (ii) The status of previous study in the field of the proposed study;
- (iii) Objective of the proposed work;
- (iv) Areas to be investigated under the proposed study;

(v) Estimated schedule and costs of major phases of work; and

(vi) Anticipated products of the work.

(3) SHA requests for FHWA approval of contracts under paragraph (a) (1) (iii) of this § 420.203 shall include:

(i) A copy of the proposed contract including the statement of work;

(ii) A determination that the prospective contractor's qualifications are adequate for the specific services to be performed;

(iii) A determination that the method of payment is appropriate and that the amount of compensation proposed is reasonable; and

(iv) A determination that the selection of the contractor is in accordance with paragraph (a) (5) of this § 420.203.

(4) The SHA shall submit an audit evaluation, in accordance with Part 170 of this chapter, for any proposed contract exceeding \$50,000.

(5) The selection of a contractor shall be based on comparative evaluations of the professional or other specific qualifications necessary for the satisfactory performance of the services required. The consideration of available contractors so qualified shall be deemed to satisfy requirements for competition. Selection of a contractor may also be made on the basis of competitive negotiation or bidding.

(6) To be eligible for Federal participation in the cost of the study, the final report, when required under paragraph (a) (3) of § 420.205 must be reviewed and accepted by the SHA and FHWA as fulfilling the objectives of the study.

(7) For planning, research, and development studies, a general review of draft reports of interim and final results is required to insure compliance with contract objectives. Correction of deficiencies found in this review is a requirement for FHWA acceptance of a report as partial or final fulfillment of contract objectives.

(b) These procedures apply to contracts with MPO for carrying out the provisions of 23 U.S.C. 134.

(1) Contracts shall be required where Federal funds are to participate either in items of work included in an approved planning work program, or in preparation of a planning work program.

(2) For purposes of these contracts, the approved planning work program may be considered the statement of work.

(3) Contracts shall be subject to FHWA approval in accordance with the following:

(i) When the estimated contract cost is \$50,000 or less, the SHA may execute a contract for items included in an approved planning work program, or for preparation of a planning work program without further FHWA approval.

(ii) When the estimated contract cost is greater than \$50,000, the contract shall be approved by the FHWA prior to execution.

(4) Contract amendments may take the form of letter agreements meeting the legal requirements of the SHA. After the first year, the SHA may elect to extend the contract time and to provide allocated funds for subsequent contract periods by amendment.

(5) For these contracts, the provisions of Part 170 of this chapter, as they regard preaward audit evaluations, may be applied as follows:

(i) The provisions of paragraph (a) of § 170.105 of this chapter which generally relate to professional qualifications and contract negotiations, are satisfied by the designation of a Metropolitan Planning Organization in accordance with 23 U.S.C. 104(f)(3).

(ii) The preaward audit evaluations described in paragraphs (b) and (c) of § 170.105 of this chapter shall be satisfied:

(A) If the State has audit assurance as to the adequacy of the prospective contractor's system to segregate and accumulate reasonable, allocable and allowable costs for the proposed contract; and

(B) If the contract is on an actual cost basis.

(iii) When these conditions do not exist, the audit evaluation requirements of paragraphs (b) and (c) of § 170.105 of this chapter shall apply. Such audit evaluations should normally precede contract award, but in all cases shall be accomplished within 60 days after contract award.

§ 420.204 Compensation.

(a) Compensation to the contractor should represent a just and equitable payment for the work or services performed. The method of payment to compensate the contractor for all work required shall be set forth in the contract and, where appropriate, in all modifications thereto.

(b) The type of contract used should be appropriate for the particular work or

services being sought; however, a "cost-plus-a-percentage-of-cost" contract shall not be used in any case.

(c) The consultant's actual direct and indirect costs eligible for Federal reimbursement shall be those allowable under the provisions of Part 1-15, Contract Cost Principles and Procedures, Federal Procurement Regulations, or SHA procurement regulations acceptable to FHWA.

(d) All contracts shall set forth a maximum limiting amount, to include direct costs, indirect costs, and proposed fee where appropriate, which cannot be exceeded without a modification of the contract. The items to be included in the indirect costs, as well as the basis for their determination shall be documented. Where applicable such documentation shall include a determination of reasonableness of the proposed fee, indicating the considerations and factors that entered into its establishment.

(e) The contract shall specify the terms and conditions of payment to the contractor. The contract should establish a method for payment as the work progresses; however, except for cost reimbursement contracts, at no time may the total of such progress payments exceed the percentage of the total work completed.

[39 FR 40946, Nov. 22, 1974; 39 FR 42354, Dec. 5, 1974]

§ 420.205 Contract provisions.

The contract shall contain appropriate provisions to address the following items as applicable:

(a) For contracts financed in accordance with paragraph (a) of § 420.203.

(1) Parties—The parties to the contract shall be identified.

(2) Statement of work—The statement of work shall be included or attached and made a part of the contract by reference.

(3) Reports—The contract shall provide that the contractor prepare a final report satisfactory to the SHA of the findings and results of the study. When the contract is for work or services not normally expected to result in a final report, such as contracts for computer services, this provision will not apply.

(4) Time.

(5) Disputes.

(6) Responsibility for claims and liability.

(7) Subcontracting and specialized services

(1) Specialized services and subcontract work shall be itemized in the contract.

(ii) After the contract is executed, additional subcontracting of specialized services shall have the written approval of the SHA and, for contracts approved under paragraph (a) (1) (iii) of § 420.203, the FHWA.

(8) Termination or abandonment—The contract shall set forth the conditions under which the contract may be terminated prior to completion to include the manner by which it will be effected and the basis for settlement.

(9) Inspection of work.

(10) Records—The contract shall provide that the contractor and his subcontractors are to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, and to make such materials available at their respective offices at all reasonable times during the contract period and for 3 years from the date of final payment to the contractor. Such materials are to be available for inspection by authorized representatives of the SHA or the Federal Government and copies thereof shall be furnished if requested.

(11) Changes in work—Supplemental agreements shall be required for any modification in the terms of the original contract to provide for changed or extra work. Such agreements shall not provide for a "cost-plus-a-percentage-of-cost" basis of payment in any case.

(12) Equipment and instrumentation.

(i) Major items of equipment or instrumentation required for contract performance shall be included in the contract.

(ii) The SHA shall require certification that items of equipment included in direct costs have been excluded from the indirect costs.

(13) Publication provisions.

(i) *General*—(A) *Copyright*. The contractor shall be free to copyright material developed under the contract with the provision that the SHA and FHWA reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

(B) *Acknowledgment and disclaimer statements*. Where appropriate, all reports published by the SHA and/or the contractor shall contain the following:

(1) An acknowledgment such as "prepared in cooperation with the U.S.

Department of Transportation, Federal Highway Administration."

(2) A disclaimer statement similar to the following:

The contents of this report reflect the views of the author who is responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the (SHA or the) Federal Highway Administration. This report does not constitute a standard, specification, or regulation.

(ii) *Research and development studies*. Reports on studies which were expected to produce an implementable product in the form of a device, procedure or the like must be written in a manner understandable to the user and in sufficient detail to permit the practicing engineer to implement the items. Interim or final reports resulting from contracts with nonprofit organizations shall not be published until the report has been accepted by the SHA and FHWA in accordance with paragraph (a) (7) of § 420.203.

(14) Covenant against contingent fees.

All contracts financed with Federal-aid highway and research funds except those to be entered into with an educational institution or other nonprofit organization shall contain the following clause:

The consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the consultant, any fee, commission, percentage, brokerage fee, gifts, or other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the SHA shall have the right to annul this contract without liability, or at its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

(ii) Each contract, except those to be entered into with an educational institution or other nonprofit organization, shall be accompanied by a "Certification of Contractor" and a "Certification of State Highway Agency" in the form shown in Appendix 1 to this part, the first to be executed by a principal officer of the firm and the second to be executed by the principal administrative officer of the State highway agency.

(15) **Patent rights**—Patent rights provisions shall be included in contracts to assure an equitable allocation of rights in inventions resulting from HP&R sponsored research and development contracts, to promote their expeditious development so that the U.S. public can benefit from early use of the inventions and to assure their continued availability. The following provisions shall be included in research and development contracts, since they are considered the minimum necessary to protect the States' and U.S. Government's interest in inventions resulting from the HP&R program.

(i) **Invention identification and disclosure.** The contractor shall establish and maintain effective procedures to assure that Subject Inventions are promptly identified.

(ii) **Disposition of principal rights.** The contractor agrees to assign to the SHA and U.S. Government the entire right, title and interest throughout the world in and to each Subject Invention; except to the extent that rights are obtained by the contractor under paragraph 6a(15)(b)2 of Federal-Aid Highway Program Manual, Volume 4, Chapter 1, Section 2, Subsection 2.¹

(iii) **Filing of domestic patent applications.** With respect to each Subject Invention in which the contractor elects to retain rights pursuant to paragraph 6a(15)(b) of Federal-Aid Highway Program Manual, Volume 4, Chapter 1, Section 2, Subsection 2, the contractor shall have a domestic patent filed within 6 months after submission of the invention disclosure. With respect to Subject Inventions, the contractor shall promptly notify the SHA of any decision not to file. For each Subject Invention on which a patent is filed, the contractor shall:

(A) Within 2 months after each filing, deliver to the SHA and FHWA a copy of the application as filed, including the filing date and serial number.

(B) Include the following statement in the second paragraph of the specification of the application and any patents issued on a Subject Invention:

The United States Government has rights in this invention pursuant to the contract between (identify the contractor) and

(Identify the State highway agency) dated (date).

(C) Within 6 months after filing the application, deliver to the SHA and FHWA a duly approved, executed and recorded legal instrument in a form specified by FHWA fully confirmatory of all rights to which the United States Government is entitled, and provide FHWA an irrevocable power to inspect and make copies of the patent application.

(D) Provide the SHA and FHWA with copies of the patent within 2 months after a patent is issued on the application.

(iv) Forfeiture of rights in unreported Subject Invention the contractor shall forfeit to the SHA and the United States Government all rights in any Subject Invention which he fails to report at or prior to the time he files a patent application thereon or submits the statement required in 6a(15)(a)2b, of Federal-Aid Highway Program Manual, Volume 4, Chapter 1, Section 2, Subsection 2.

(16) **Civil Rights.**

(i) The contract and all subcontracts shall provide for compliance with Title 49 CFR Part 21, promulgated to effectuate Title VI of the Civil Rights Act of 1964.

(ii) In keeping with the requirements of Federal regulations, the clauses contained in Appendix 2 to this part shall be included in planning and research contracts financed in whole or in part with Federal-aid highway funds.

(17) **Travel.**

(18) **Timeliness.**

(b) For contracts financed in accordance with paragraph (b) of § 420.203.

(1) **Parties.**

(2) **Statement of work.**

(3) **Time.**

(4) **Responsibility for claims and liability.**

(5) **Subcontracting.** Subcontracting, with the exception of contract for services incidental to the study operations such as printing, aerial photograph coverage, and computer services must be approved by the SHA and FHWA. All subcontracts entered into by MPO's shall be subject to the applicable provisions of paragraph (a) of § 420.205.

(6) **Termination or abandonment.** The contract shall set forth the conditions under which the contract may be terminated prior to completion to include the

¹ The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th St. SW., Washington, D.C. 20590.

manner by which it will be effected and the basis for settlement.

(7) Inspection of work.

(8) Records. The contract shall provide that the contractor and his subcontractors are to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, and to make such materials available at their respective offices at all reasonable times during the contract period and for 3 years from the date of final payment to the contractor. Such materials are to be available for inspection by authorized representatives of the SHA or the Federal Government and copies thereof shall be furnished if requested.

(9) Equipment. The SHA shall require certification that items of equipment included in direct costs have been excluded from the indirect costs.

(10) Publication provisions.

(i) *Copyright.* The contractor shall be free to copyright material developed under the contract with the provisions that the SHA and FHWA reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for Government purposes.

(ii) *Acknowledgment.* All reports published by the SHA and/or the contractor shall contain a credit reference to FHWA such as "prepared in cooperation with the U.S. Department of Transportation, Federal Highway Administration."

(11) Civil Rights.

(i) The contract and all subcontracts shall provide for compliance with 49 CFR Part 21, promulgated to effectuate Title VI of the Civil Rights Act of 1964.

(ii) In keeping with the requirements of Federal regulations, the clauses contained in Appendix 2 to this part shall be included in planning and research contracts financed in whole or in part with Federal-aid highway funds.

(12) Travel.

§ 420.206 Alternate procedure.

(a) This procedure is not applicable to contracts described in paragraph (b) of § 420.203.

(b) As an alternative to the procedures otherwise set forth elsewhere in this subpart:

(1) The SHA at its option may obtain approval by FHWA of an administrative plan under which the SHA would certify the procedures by which contractors

would be utilized to provide services under planning and research contracts to be financed in whole or in part with Federal-aid highway planning and research funds.

(2) To the extent an SHA's administrative plan is found acceptable by the Regional Federal Highway Administrator (RFHWA), FHWA approval of individual contracts, costing less than \$500,000 or supplements thereto, would not be required. This would not, however, relieve the SHA of requirements for approval of the statements of work as specified under § 420.203. This alternative procedure may be approved for use by any SHA desiring to adopt it when requirements in paragraph (c) of this § 420.206 are found by the RFHWA to be satisfied. Until the administrative plan has been approved by the FHWA, the procedures set forth elsewhere in this subpart are to be used.

(c) Should the SHA desire to implement the alternate plan it shall file a formal application with the FHWA which application, as a minimum, shall include:

(1) The SHA's written procedures for:

(i) Soliciting and evaluating proposals for planning and research and development work or services;

(ii) Selecting a qualified consultant to perform the work or services;

(iii) Determining that the contract provisions are satisfactory;

(iv) Determining that the type of contract is appropriate, and that the amount of proposed compensation is reasonable;

(v) Documentation of the file for compliance with provisions of the above paragraphs (c) (1) (i)-(iv) of this § 420.206 for each procurement action.

(2) A statement signed by the chief administrative officer of the State highway agency certifying that there shall be conformance with the provisions of this Subpart and all applicable Federal and State laws and administrative requirements.

APPENDIX 1

State Contract No.-----
Federal-aid Project-----
State -----

CERTIFICATION OF CONTRACTOR

I hereby certify that I am the -----
(title)

and duly authorized representative of the firm of -----, whose address is -----, and that neither I nor the above firm I here represent has:

(a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person

(other than a bona fide employee working solely for me or the above contractor) to solicit or secure this contract,

(b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or

(c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above contractor) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the State highway agency and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

(Date)

Signature

CERTIFICATION OF STATE HIGHWAY AGENCY

I hereby certify that I am the -----
(title)

of the highway agency of the State of -----
-----, and that the above contractor or his representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

(a) employ or retain, or agree to employ or retain, any firm or person, or

(b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;
except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

(Date)

Signature

APPENDIX 2

NOTICE TO CONTRACTORS: COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

(1) *Compliance with regulations.* The contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the regulations), which are herein incorporated by reference and made a part of this contract.

(2) *Nondiscrimination.* The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by § 21.5 of the regulations, including employment practices when the contract covers a program set forth in Appendix B of the regulations.

(3) *Solicitations for subcontracts, including procurements of materials and equipment.* In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the regulations relative to nondiscrimination on the ground of race, color or national origin.

(4) *Information and reports.* The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway agency or the Federal Highway Administration to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway agency or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) *Sanctions for noncompliance.* In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway agency shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,

(a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) Cancellation, termination or suspension of the contract, in whole or in part.

(6) *Incorporation of provisions.* The contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, order, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the State highway agency or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a sub-

contractor or supplier as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

PARTS 421—469 [RESERVED]

PART 470—HIGHWAY SYSTEMS

Subpart A—Federal-Aid Highway Systems (Other Than Urban)

Sec.

- 470.101 Purpose.
- 470.103 System classification.
- 470.105 Integration of systems.
- 470.107 General procedures.
- 470.109 Procedures for interstate system.
- 470.111 Reclassification, deletions, and reinstatements.

Subpart B [Reserved]

Subpart C—Priority Primary Routes—Route Selection and Approval Procedures

- 470.301 Purpose.
- 470.303 Definitions.
- 470.305 Route selection.
- 470.307 Route approvals.

Subpart A—Federal-Aid Highway Systems (Other Than Urban)

AUTHORITY: 23 U.S.C. 103(b) (1), 103(c) (1), 103(e) (1), 103(e) (3), 103(f), 315; 49 CFR 1.48(b) (2) and (b) (35).

SOURCE: 39 FR 35142, Sept. 30, 1974, unless otherwise noted.

§ 470.101 Purpose.

To set forth policies and procedures relating to designation of the National System of Interstate and Defense Highways, the Federal-aid primary highway system and the Federal-aid secondary highway system in accordance with the provisions of sections 103(b) (1), 103(c) (1), 103(e) (1) and (3), and 103(f) of title 23, United States Code.

§ 470.103 System classification.

(a) The National System of Interstate and Defense Highways shall consist of routes of highest importance to the Nation which connect the principal metropolitan areas, cities, and industrial centers, including important routes into, through, and around urban areas, serve the national defense, and to the greatest extent possible connect at suitable border points with routes of continental importance in Canada and Mexico.

(b) The Federal-aid primary system shall consist of routes of the National System of Interstate and Defense Highways and other important routes with

their urban extensions, including important loops, belt highways, and spurs.

(c) The Federal-Aid secondary system shall consist of the principal secondary and feeder routes in rural and urban areas.

§ 470.105 Integration of systems.

All systems shall be properly integrated, with each route connected to another Federal-aid route.

§ 470.107 General procedures.

(a) State highway agencies shall have the responsibility for initiating route selections and proposing changes in routes already designated. In justification of the desired action, each proposal shall contain adequate supporting information and maps of sufficient scale and detail to show the system changes involved. In the event the proposal involves routes through Federal reservations, it shall be discussed with the appropriate Federal agency.

(b) Proposals shall contain a statement by the State highway agencies that there has been cooperation with appropriate local road officials regarding the Federal-aid secondary system and that, in urbanized areas, the proposal is in accordance with the planning process pursuant to section 134, United States Code.

§ 470.109 Procedures for interstate system.

Interstate routes shall be numbered in accordance with the numbering scheme adopted by the American Association of State Highway and Transportation Officials.

§ 470.111 Reclassification, deletions, and reinstatements.

(a) The reclassification of a Federal-aid highway route from one Federal-aid system to another shall not relieve the State of its obligation to the Federal Government to maintain portions thereof constructed as Federal-aid projects or of any other obligation included in project agreements executed for Federal-aid projects on portions of that route.

(b) The approved deletion of a Federal-aid highway route from any Federal-aid system, without reclassification to another Federal-aid system, shall relieve the State of its obligation to the Federal Government to maintain portions thereof constructed as Federal-aid projects. Such deletion shall also relieve the State of any other obligation included in project agreements executed

for Federal-aid projects on portions of the deleted route.

(c) Requests for reinstatement of routes previously deleted from any Federal-aid system shall be approved only when the State expressly agrees to resume its obligation for the maintenance of any portion of the route constructed as a Federal-aid project. Resumption of any other obligations included in project agreements executed from Federal-aid projects on the route being considered for reinstatement shall be mutually agreed to by the State and the Federal Highway Administration.

Subpart B [Reserved]

Subpart C—Priority Primary Routes—Route Selection and Approval Procedures

AUTHORITY: 23 U.S.C. 147 and 315; 49 CFR 1.48(b) (28) and (35).

SOURCE: 39 FR 37637, Oct. 23, 1974, unless otherwise noted.

§ 470.301 Purpose.

The purpose of this directive is to prescribe the procedures for selection and approval of priority primary routes.

§ 470.303 Definitions.

For the purposes of this subpart the following definitions apply: (a) "Priority Primary Routes" means high traffic sections of highways on the Federal-aid primary system which connect to the Interstate System and are selected for priority of improvement to supplement the service provided by the Interstate System by furnishing needed adequate traffic collector and distributor facilities.

(b) "Appropriate local officials" means (1) in rural and urban areas under 50,000 population, principal elected officials of general purpose local governments; or (2) in urbanized areas, principal elected officials of general purpose local governments (and until January 2, 1975, the Commissioner of the District of Columbia), acting through the metropolitan planning organization designated by the Governor.

§ 470.305 Route selection.

(a) The State highway department, in consultation with appropriate local officials, shall select priority primary routes.

(b) Priority primary routes shall connect to the Interstate System at one or more points either directly or in combination with another priority primary route. Priority primary routes shall

satisfy all provisions of 23 U.S.C. 103(b) (1) regarding the existing Federal-aid primary system. After June 30, 1976, priority primary routes shall satisfy all provisions of 23 U.S.C. 103(b) (2) regarding realignment of the Federal-aid primary system on the basis of anticipated functional usage.

§ 470.307 Route approvals.

The FHWA Division Engineer in each State is authorized to approve priority primary routes.

PARTS 471—472 [RESERVED]

PART 473—FEDERAL-AID URBAN SYSTEM

Subpart A—Establishment of System

Sec.

- 473.100 Purpose.
- 473.102 Definitions.
- 473.104 Establishment of Federal-aid urban areas and routes.
- 473.106 Designation of urban system by appropriate local officials and State highway departments.
- 473.108 Approval by the Federal Highway Administrator.

AUTHORITY: 23 U.S.C. 103(d) (1), 103 (f) and 315; delegation of authority in 49 CFR 1.48(b).

SOURCE: 39 FR 39658, Nov. 8, 1974, unless otherwise noted.

Subpart A—Establishment of System

§ 473.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 103(d) (1) which provides for establishment of the Federal-aid urban system.

§ 473.102 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) As used herein—

"Appropriate local officials" means—

(1) In urban areas under 50,000 population, principal elected officials of general purpose local governments; and

(2) In urbanized areas, principal elected officials of general purpose local governments (and until January 2, 1975, the Commissioner of the District of Columbia), acting through the Metropolitan Planning Organization designated by the Governor.

§ 473.104 Establishment of Federal-aid urban areas and routes.

(a) The urban system shall:

(1) be established in each urbanized area and in other urban areas the State highway department may designate;

(2) be located so as to serve the major centers of activity and include high traffic volume arterial and collector routes, including access roads to major traffic generators such as airports and other transportation terminals;

(3) consist of routes selected by the appropriate local officials so as to serve the goals and objectives of the community, with the concurrence of the State highway departments and, in urbanized areas, also in accordance with the planning process under 23 U.S.C. 134 and proposed 23 CFR Part 450, Subpart A, which is to be published for notice and comment, provided that:

(i) to the extent feasible, each route on the Federal-aid urban system shall connect with another route on a Federal-aid system; and

(ii) no route on the Federal-aid urban system shall also be a route on any other Federal-aid system.

(b) At its maximum extent the Federal-aid urban system may include all highways not functionally classified as local streets.

[39 FR 39658, Nov. 8, 1974; 39 FR 40763, Nov. 20, 1974]

§ 473.106 Designation of urban system by appropriate local officials and State highway departments.

The State highway department shall submit proposals to the Federal Highway Administrator for the designation of Federal-aid urban systems. Each proposal shall include:

(a) a map or maps delineating the Federal-aid urban system and showing the urban area boundaries, all urban system route selections, and all other Federal-aid routes;

(b) a statement indicating whether urban area boundary and urban system actions are being submitted concurrently; and

(c) evidence of the approval of appropriate local officials and the concurrence of the State highway department as required under § 473.104(a)(3).

§ 473.108 Approval by the Federal Highway Administrator.

The Federal Highway Administrator will approve the urban system designation if it meets the requirements of this subpart.

PARTS 474—475 [RESERVED]

PART 476—INTERSTATE HIGHWAY SYSTEM

Subpart A—General

Sec.

476.2 Definitions.

Subpart B—Required State Action Regarding Designated Segments of the Interstate System

476.100 Purpose.

476.102 Relation to Subparts C, D, and G.

476.104 Applicability.

476.106 Required State action—June 17, 1974.

476.108 Required State action—July 1, 1975.

476.110 Noncompliance—action by the Federal Highway Administrator.

Subpart C—Interstate System Modifications Under 23 U.S.C. 103(e)(2)

476.200 Purpose.

476.202 Applicability.

476.204 Withdrawal request.

476.206 Request for substitute or additional segment.

476.208 Withdrawal approval by Federal Highway Administrator.

476.210 Approval of substitute and additional segments by the Federal Highway Administrator.

476.212 Applicability of title 23, United States Code.

Subpart D—Withdrawal of Interstate Segments and Substitution of Public Mass Transit Projects

476.300 Purpose.

476.302 Applicability.

476.304 Withdrawal request.

476.306 Withdrawal approval.

476.308 Proposal for substitute public mass transit projects.

476.310 Submission of proposal for substitute public mass transit projects by Governor.

476.312 Combined proposals.

476.314 Administrators' review of proposal for substitute public mass transit projects.

476.316 Approval of substitute public mass transit projects.

476.318 Redesignation of withdrawn mileage.

Subparts E—F [Reserved]

Subpart G—Regulations for State Construction of Interstate Segments Entirely Within the Boundaries of an Incorporated City

476.600 Purpose.

476.602 Applicability.

476.604 Interstate segments must connect to the System.

476.606 State must notify city of intentions regarding construction.

476.608 City's notice of intent to construct Interstate segment.

476.610 Agreement.

476.612 State Responsibility.

AUTHORITY: (23 U.S.C. 103(e)(2), 103(e)(4), 103(g), 103(h) and 315); delegation of authority in 49 CFR 1.48(b) and 1.50(f).

SOURCE: 39 FR 20663, June 12, 1974, unless otherwise noted.

Subpart A—General**§ 476.2 Definitions.**

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this Part as so defined.

(b) The following terms, where used in the regulations in this Part, have the following meaning—

“Interstate segment” means any designated, toll-free route, or portion thereof, of the Interstate System described in 23 U.S.C. 103(e) (1) and 23 U.S.C. 103(e) (3).

“Initial basic construction” means the first physical construction to be financed with Federal matching funds apportioned under 23 U.S.C. 104(b) (5)—

(1) which is on, or directly connected with the through traffic lanes of a highway project (including grading, drainage, paving, and the construction of grade separations, interchanges, and major stream crossing structures, but not including the construction of frontage roads); or

(2) which is on an existing highway facility designated as an Interstate segment, to improve the segment to Interstate standards.

“Local governments concerned” means local units of general purpose government under State law within whose jurisdiction the Interstate segment lies, or is to be withdrawn, added, or substituted.

“Nonhighway public mass transit project” means any undertaking to develop or improve public mass transit facilities or equipment. A project must be included in and related to a program for the development or improvement of an urban public mass transit system which includes either the construction of fixed rail facilities, or the purchase of passenger equipment, or both. Passenger equipment includes buses, fixed rail rolling stock, and other transportation equipment.

“Responsible local officials” means the principal elected officials of general purpose local governments (and until January 2, 1975, the Commissioner of the District of Columbia) acting through the Metropolitan Planning Organization designed by the Governor. For purposes of this definition the term “Governor” includes the Commissioner of the District of Columbia until January 2, 1975, and thereafter the Mayor of the District of Columbia.

[39 FR 20663, June 12, 1974, as amended at 39 FR 39659, Nov. 8, 1974]

Subpart B—Required State Actions Regarding Designated Segments of the Interstate System**§ 476.100 Purpose.**

The purpose of the regulations in this Subpart is to implement 23 U.S.C 103(g), which requires that States provide certain information to the Secretary with respect to segments of the Interstate System to which these regulations apply. Failure to supply the required information may result in removal of a segment from the Interstate System.

§ 476.102 Relation to Subparts C, D, and G.

Any information or schedule provided to the Federal Highway Administrator under this Subpart will not prevent the State highway department; the Governor, local governments concerned, and responsible local officials; or incorporated cities from subsequently exercising the options provided by Subparts C, D, and G of this part.

§ 476.104 Applicability.

The regulations in this Subpart shall be applicable to each Interstate segment for which the State highway department has not received Federal Highway Administration authorization to advertise for bids for initial basic construction and to each proposed alternative Interstate segment substituted therefor, except that this Subpart shall not apply to District of Columbia Interstate System segments referred to in section 23(a), Federal-Aid Highway Act of 1968, 82 Stat. 815.

**§ 476.106 Required State action—
June 17, 1974.**

With respect to each Interstate segment to which these regulations are applicable, the State shall submit to the Federal Highway Administrator by June 17, 1974, a good faith notification that:

(a) It presently intends to construct the segment;

(b) It presently intends to construct the segment, but anticipates that:

(1) The State highway department may request withdrawal of the segment and substitution of an alternative segment as provided in Subpart C of this Part;

(2) The State highway department may request modification or revision of the segment under the provisions of 23 U.S.C. 103(e) (1) or (f);

(3) The Governor, the local governments concerned, and responsible local

officials may request withdrawal of the segment and substitution of one or more public mass transit projects as provided in Subpart D of this Part; or

(4) Any combination of paragraphs (b) (1), (2), and (3) of this section may occur;

(c) It has requested withdrawal of the segment as provided in Subpart C or D of this Part; or

(d) It anticipates that an incorporated city will file a notice of intent under Subpart G of this Part with respect to construction of a segment which is entirely within the boundaries of an incorporated city.

§ 476.108 Required State action—July 1, 1975.

(a) Unless a request for withdrawal of the segment has been made as provided in Subpart D of this Part, the State shall submit the following to the Federal Highway Administrator by July 1, 1975, with respect to each Interstate segment or proposed alternative segment to which these regulations are applicable:

(1) A schedule for the expenditure of funds for completion of construction of the segment within the period of availability of funds authorized to be appropriated for completion of the Interstate System; and

(2) An assurance that the segment will be built according to that schedule.

(b) The schedule and assurance shall be accompanied by, and the assurance shall discuss, the following supporting material:

(1) A description of the basis for the schedule (which shall include, but not be limited to, assumed completion date, assumed funding level, and use of five year plan);

(2) A detailed analysis of the current status of the segment (which shall include, but not be limited to, hearings, environmental impact statement, and section 4(f) determination);

(3) A discussion of any controversy concerning the segment, including litigation and local opposition, together with an estimation of the probable outcome of the controversy; and

(4) A summary of any further information and considerations supporting the assurance statement, including a statement of the views of responsible local officials and local governments concerned.

§ 476.110 Noncompliance—action by the Federal Highway Administrator.

(a) On July 1, 1974, the Federal Highway Administrator shall remove from the Interstate System any segment for which the State has not submitted a notification as provided in § 476.106, unless he finds that the segment is essential to completion of a unified and connected Interstate System or unless an incorporated city has submitted a notice of intent under Subpart G of this Part.

(b) As soon after July 1, 1975, as practicable, the Federal Highway Administrator shall remove from the Interstate System any segment for which the State has not met the requirements of § 476.108.

(c) A segment removed for noncompliance under § 476.110(b) shall not be redesignated as a part of the Interstate System except upon a finding by the Federal Highway Administrator that it is necessary in the interest of national defense or for other reasons of national interest.

(d) The mileage from segments removed from the Interstate System under paragraphs (a) and (b) of this section is available for designation on the Interstate System in accordance with the provisions of 23 U.S.C. 103 (e) (1) and (f).

Subpart C—Interstate System Modifications Under 23 U.S.C. 103(e)(2) (Cramer-Howard Amendment)

§ 476.200 Purpose.

The purpose of the regulations in this subpart is to implement 23 U.S.C. 103 (e) (2), which permits withdrawal of a segment from the Interstate System and substitution or addition of other Interstate segments.

§ 476.202 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, the regulations in this subpart apply to Interstate segments selected and approved under title 23, United States Code, prior to August 13, 1973, at any stage of development.

(b) The regulations in this subpart shall not apply to a segment removed from the Interstate System prior to August 13, 1973.

(c) The regulations in this subpart shall not apply to Interstate segments designated under 23 U.S.C. 139(a).

§ 476.204 Withdrawal request.

(a) A request to withdraw an Interstate segment from the Interstate Sys-

tem shall be submitted by the State highway department, *Provided*, That:

(1) If the segment is located in an urbanized area, the request shall be submitted only after consultation with the local governments concerned and responsible local officials of that urbanized area; and

(2) If the segment has a present or planned transit component, the request shall be submitted only after consultation with the affected transit agency or operator.

(b) The request for withdrawal shall include the following:

(1) A statement that the segment will not become a part of the Interstate System, and a statement of the basis for this determination, including:

(i) Reasons why the segment is not essential to the completion of a unified and connected Interstate System (including consideration of urban routes necessary for metropolitan transportation); and

(ii) Reasons why it will not be completed as a part of the Interstate System, or cannot become a functional part of the Interstate System;

(2) A statement of mileage and cost of the segment to be withdrawn as included in the 1972 Interstate System Cost Estimate; and

(3) An assurance that a toll road will not be constructed in the traffic corridor which would be served by the segment.

§ 476.206 Request for substitute or additional segment.

(a) A State highway department may request use of the mileage withdrawn under § 476.204, or of the additional Interstate mileage authorized by 23 U.S.C. 103(e) (2), or both, for a substitute or additional segment. If the substitute or additional segment is to be located in an urbanized area, the request must be submitted by the State highway department after consultation with the local governments concerned and responsible local officials of that urbanized area.

(b) A request for a substitute or additional Interstate segment may be combined with a proposal for one or more public mass transit projects submitted under the provisions of Subpart D of this Part.

§ 476.208 Withdrawal approval by the Federal Highway Administrator.

The Federal Highway Administrator may withdraw the approval of an Interstate segment if:

(a) He determines that it is not essential to completion of a unified and connected Interstate System (including consideration of urban routes necessary for metropolitan transportation);

(b) The segment will not become a part of the Interstate System; and

(c) He receives the assurance required in § 476.204(b) (3).

§ 476.210 Approval of substitute and additional segments by the Federal Highway Administrator.

In considering requests for substitute or additional Interstate segments, the Federal Highway Administrator shall:

(a) Consult with the States and local governments concerned;

(b) Give due regard to Interstate highway type needs on a nationwide basis; and

(c) Give preference to:

(1) Segments in States in which he has withdrawn approval of other segments; and

(2) The extension of segments which terminate within municipalities served by a single Interstate route, so as to provide service entirely through those municipalities.

§ 476.212 Applicability of title 23, United States Code.

(a) All the provisions of title 23, United States Code, shall be applicable to substitute and additional mileage except that the Federal cost of any mileage requested shall not exceed the Federal cost of the mileage withdrawn as included in the 1972 Interstate System Cost Estimate except as provided in paragraph (c) of this section.

(b) If the cost of the withdrawn mileage exceeds the current estimated cost of the substitute or additional mileage requested by a State highway department, the Federal Highway Administrator may make the excess funds available for other substitute or additional Interstate segments in the same State or in other States.

(c) If the current estimated Federal cost of the substitute or additional mileage requested exceeds the permissible cost, the Federal Highway Administrator may approve the request *Provided*, That:

(1) The State highway department agrees to provide the excess cost with other than Federal-aid Interstate funds; or

(2) The Federal Highway Administrator agrees to provide the excess cost from

funds available under paragraph (b) of this section.

Subpart D—Withdrawal of Interstate Segments and Substitution of Public Mass Transit Projects

§ 476.300 Purpose.

The purpose of the regulations in this subpart is to prescribe policies and procedures for implementation of 23 U.S.C. 103(e) (4), which permits the withdrawal of Interstate System segments and the substitution of public mass transit projects.

§ 476.302 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, an Interstate segment at any stage of development may be withdrawn, and public mass transit projects substituted in lieu thereof, if:

(1) The segment is within an urbanized area as defined in 23 U.S.C. 101(a); and

(2) The segment was selected and approved as part of the Interstate System prior to August 13, 1973.

(b) The regulations in this subpart shall not apply to a segment removed from the Interstate System prior to August 13, 1973.

(c) The regulations in this subpart shall not apply to Interstate segments designated under 23 U.S.C. 139(a).

§ 476.304 Withdrawal request.

(a) A request to withdraw a segment under this subpart shall be submitted to the Federal Highway Administrator and the Urban Mass Transportation Administrator through the Federal Highway Administrator.

(b) A withdrawal request submitted under this Subpart shall:

(1) Be submitted jointly by the Governor and local governments concerned, with the concurrence of responsible local officials;

(2) Include a statement that the request is filed pursuant to 23 U.S.C. 103 (e) (4);

(3) State the reasons why the segment is not essential to the completion of a unified and connected Interstate System, under the standards of 23 U.S.C. 103(e) (1), or would not be essential after completion of one or more substitute public mass transit projects;

(4) Include a statement of intent to submit a mass transit proposal upon approval of the withdrawal; and

(5) Include an assurance that a toll road will not be constructed in the traffic corridor which would be served by the segment.

§ 476.306 Withdrawal approval.

(a) The Federal Highway Administrator may approve the withdrawal of an Interstate segment under the provisions of this subpart if:

(1) The requirements of § 476.304 are met; and

(2) He determines that the segment is not essential to completion of a unified and connected Interstate System under the standards of 23 U.S.C. 103(e) (1), or the Federal Highway Administrator and the Urban Mass Transportation Administrator determine that the needs of interstate traffic are provided for by other planned or existing Interstate segments in the area and that substitute public mass transit projects together with the local street and highway network could provide an adequate level of intraurban transportation service.

(b) When the Federal Highway Administrator approves the withdrawal of an Interstate segment under paragraph (a) of this section, an amount not to exceed the Federal share of the cost which would have been paid for the withdrawn segment (as that cost is included in the 1972 Interstate System Cost Estimate) will be available for obligation until June 30, 1981, out of the general funds in the Treasury to pay all or part of the Federal share of substitute public mass transit projects or phases thereof, provided that the substitute projects or phases thereof are approved under § 476.316.

§ 476.308 Proposal for substitute public mass transit projects.

(a) When responsible local officials determine that their needs require one or more public mass transit projects in lieu of a withdrawn Interstate segment, they shall notify the State highway department of this determination. Proposals for mass transit projects shall be developed by:

(1) Elected officials of general purpose units of government in consultation with local transit operating officials; or

(2) Local transit operating officials.

(b) The proposal for each substitute project shall include the following:

(1) A statement of the reasons for the determination that one or more substitute public mass transit projects are required;

(2) A description of each proposed substitute project;

(3) A cost estimate for each proposed substitute project, accompanied by supporting documentation;

(4) A statement of the Federal share of the cost of the withdrawn Interstate segment for which the proposed public mass transit projects are to be substituted as the cost is shown in the 1972 Interstate System Cost Estimate;

(5) Where the Federal share of the cost of the withdrawn segment is less than 80 percent of the cost estimate of the proposed substitute projects, an assurance that adequate funding to complete the projects will be provided from other sources, with a discussion of the basis of that assurance.

(6) An assurance that the proposed substitute projects will be fully utilized by the public mass transportation system, with a discussion of the relevant information provided by local transit operating officials and other bases of that assurance; and

(7) A determination that the proposed substitute projects are in accord with and entitled to priority under the 23 U.S.C. 134 planning process, with a discussion of the basis of the determination.

(c) When responsible local officials approve a proposal, it shall be forwarded to the Governor for submission to the Urban Mass Transportation Administrator in accordance with the provisions of § 476.310.

§ 476.310 Submission of proposal for substitute public mass transit projects by Governor.

(a) When the Governor receives a proposal for one or more substitute public mass transit projects from responsible local officials which meets the requirements of § 476.308, he shall submit the proposal to the Urban Mass Transportation Administrator, *Provided*, That:

(1) He concurs in the assurance that the proposed project will be fully utilized by the public mass transportation system; and

(2) The State highway department concurs in the determination that the proposed projects are in accord with and entitled to priority under the 23 U.S.C. 134 planning process.

(b) A proposal for substitute public mass transit projects may be submitted to the Urban Mass Transportation Administrator at the same time as a with-

drawal request is submitted to the Federal Highway Administrator under § 476.304.

§ 476.312 Combined proposal.

(a) A proposal for one or more substitute public mass transit projects may be combined with a request for a substitute or additional Interstate segment submitted under the provisions of Subpart C of this part.

(b) A proposal for one or more substitute public mass transit projects may be combined with an application for Federal financial assistance under the Urban Mass Transportation Act of 1964, as amended. Any Federal financial assistance received under the Urban Mass Transportation Act of 1964, as amended, is supplementary to the amount that is available under the provisions of this subpart by virtue of the withdrawal of an Interstate segment, and is not constrained by § 476.316(b)(1).

§ 476.314 Administrators' review of proposal for substitute public mass transit projects.

(a) The Urban Mass Transportation Administrator and the Federal Highway Administrator shall review the proposal for one or more substitute public mass transit projects to determine whether the following criteria have been met:

(1) The proposed projects must serve the urbanized area from which the Interstate segment is withdrawn, but need not utilize the same transportation corridor as the withdrawn segment and need not be physically located within that urbanized area;

(2) The Federal share of the costs of the proposed projects, which is to be provided under this Subpart by virtue of the withdrawal of an Interstate segment, does not exceed the Federal share of the cost of the withdrawn segment, as that cost is included in the 1972 Interstate System Cost Estimate; and

(3) The assurance that the proposed projects will be fully utilized by the public mass transportation system is satisfactory.

(b) The Urban Mass Transportation Administrators' determination that the criteria of paragraph (a) of this section have been met is a precondition to approval of a substitute public mass transit project. However, no Federal funds will be obligated to pay the Federal share of the cost of a substitute project until the conditions of § 476.316 have been met.

§ 476.316 Approval of substitute public mass transit projects.

(a) Approval of the plans, specifications, and estimates of a substitute public mass transit project, or any phase thereof, shall be deemed to occur on the date the Urban Mass Transportation Administrator approves the substitute project or phase thereof in accordance with the UMTA External Operating Manual (UMTA Order 1000.2, dated August 22, 1972). This approval of a substitute project or phase thereof obligates the United States to pay its proportional share of the cost of the project or phase thereof out of the general funds in the Treasury.

(b) The Federal proportional share of a substitute project or phase thereof is determined under the provisions of the Urban Mass Transportation Act of 1964, as amended. This Federal obligation is subject to the following conditions:

(1) The total Federal proportional share of the cost of one or more substitute public mass transit projects, which is provided under this Subpart by virtue of the withdrawal of an Interstate segment, cannot exceed the Federal share of the cost of the withdrawn segment, as that cost is included in the 1972 Interstate System Cost Estimate.

(2) No general funds shall be obligated under the provisions of this section after June 30, 1981.

(c) When Federal funds are obligated to pay the Federal share of the cost of a substitute public mass transit project or phase thereof, the State's Interstate apportionments based upon an Interstate System cost estimate which includes the withdrawn segment for which the public mass transit project is being substituted shall be reduced by the amount thus obligated.

§ 476.318 Redesignation of withdrawn mileage.

Mileage withdrawn under the provisions of this Subpart shall be available for redesignation under 23 U.S.C. 103(e) (1) without cost limitation, but subject to the following conditions:

(a) It shall not be redesignated in the State from which withdrawn; and

(b) Its redesignation shall not cause the overall Interstate mileage limitation to be exceeded.

Subparts E—F [Reserved]

Subpart G—Regulations for State Construction of Interstate Segments Located Entirely Within the Boundaries of an Incorporated City

SOURCE: 39 FR 20667, June 12, 1974, unless otherwise noted.

§ 476.600 Purpose.

The purpose of this part is to implement section 103(h) of Title 23, United States Code.

§ 476.602 Applicability.

The regulations in this Subpart shall be applicable to any Interstate segment that was, on June 1, 1973, a designated part of the integrated and connected highway system described in 23 U.S.C. 103(e) (1) of substantial length between logical termini (major crossroad, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study.

§ 476.604 Interstate segments must connect to the system.

Individual segments that cross the boundary line between contiguous States or cities are to connect at the boundary line.

§ 476.606 State must notify city of intentions regarding construction.

Each State must provide, on or before June 17, 1974, to those incorporated cities that have Interstate segments entirely within their boundaries a copy of assurances provided to the Federal Highway Administrator with respect to such highways under 23 U.S.C. 103(g) and 23 CFR 476.106.

§ 476.608 City's notice of intent to construct Interstate segment.

(a) An incorporated city desiring to avail itself of the benefits of section 103(h) of Title 23, United States Code, must, on or before July 1, 1974, submit to the Federal Highway Administrator a notice of intent to pay for construction of Interstate segments entirely within the city's boundaries.

(b) The city shall furnish to the State highway department a copy of its notice at the same time it is transmitted to the Federal Highway Administrator.

§ 476.610 Agreement.

(a) Any city that has filed a notification of intent under § 476.610 shall, on or before January 1, 1975, submit the following information to the Federal Highway Administrator.

(1) Opinion of the incorporated city's legal counsel that the city has the constitutional and statutory authority to embark upon such a capital improvement and that the governing body of the city has the legal authority to approve any agreement between the city and the Federal government to undertake such a project and to commit local funding.

(2) General description of the Interstate segment and city boundaries (appropriate maps may satisfy this requirement).

(3) Satisfactory assurances that the city will promptly enter into an agreement with the Federal Highway Administrator to pay all non-Federal costs of construction of such segment and of the availability and source of funds for this purpose.

(4) Any other pertinent information on the status of the Interstate segment as may be required by the Federal Highway Administrator.

(b) The Federal Highway Administrator shall take action on a city's application within 30 days of receipt of the information required in paragraph (a) of this section.

(c) When he is satisfied with a city's submission, the Federal Highway Administrator will provide it with a form of agreement, which the Administrator will sign when the agreement has been approved and executed by the city, acting through its duly authorized officials.

§ 476.612 State responsibility.

(a) Upon agreement between a city and the Federal Highway Administrator with respect to payment of the non-Federal costs of construction, the State in which the Interstate segment is located shall:

(1) Undertake construction in accordance with the provisions of Title 23, United States Code, and other applicable Federal laws and regulations, and

(2) On or before July 1, 1975, submit a schedule for the expenditure of funds for completion of construction of such segment within the period of availability of funds authorized to be appropriated for completion of the Interstate System and provide assurances that such segment will be constructed as required by § 476.108.

(b) The State may delegate the responsibility of construction to the city, subject to the approval of the Federal Highway Administrator.

Effective date. Because of the need to resolve questions about the completion of the Interstate System as quickly as possible, the relationship of the requirements in these regulations to statutory deadlines in 23 U.S.C. 103(g), the limited number of governmental agencies to which the regulations are applicable, and the relative simplicity of the requirements imposed within the next 30 days, these regulations are effective upon publication in the FEDERAL REGISTER, June 12, 1974.

PARTS 477—489 [RESERVED]

PART 490—SPECIAL PROGRAMS

Subpart A—Economic Growth Center Development Highways

Sec.

490.101 Purpose.

490.103 Definitions.

490.105 Applicability.

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Appendix A—Criteria for Selection and Approval of Economic Growth Center Highways and Development Highway Projects.

AUTHORITY: 23 U.S.C. 143, 315; 49 CFR 1.48(b) (26) and (35).

SOURCE: 39 FR 35142, Sept. 30, 1974, unless otherwise noted.

Subpart A—Economic Growth Center Development Highways

§ 490.101 Purpose.

The purpose of this subpart is to prescribe policies and procedures for administering the Economic Growth Center Development Highway Program by furnishing specific procedures, criteria, and definitions needed to assist State Governors, State highway officials, and Federal Highway Administration headquarters and field staffs in implementing the program.

§ 490.103 Definitions.

(a) The term "Commuting Range" means that distance from a growth center from which residents of rural counties can commute daily, with reasonable convenience, to work or other opportunities in the growth center.

(b) The term "Development Highway Projects" means a project on an economic growth center development highway approved by the Federal Highway Administrator for construction, reconstruction, or other improvement with funds authorized under provisions of 23 U.S.C. 143.

(c) The term "Division Engineer" means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

(d) The term "Economically Capable" means the economic capability of an area to be designated as an economic growth center. A determination that a proposed growth center is economically capable will rest primarily upon past economic performance of the area and upon its future potential.

(e) The term "Economic Development" means economic development of an area as evidenced by increments in total income, employment opportunities, population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, and/or gains in other measures of economic activity, such as land values.

(f) The term "Economic Development District" means a group of adjacent counties or areas, including a growth center, grouped together under a program authorized by Congress and designated by the Economic Development Administration.

(g) The term "Economic Development Plan" means a formal attempt to bring order, priority, and foresight into government and private expenditures.

(h) The term "Economic Growth Center" means a center of less than 100,000 population approved by the Secretary on the basis of recommendations of the Governor of the State.

(i) The term "Economic Growth Center Development Highway" means a highway on any Federal-aid system except the Interstate System which meets the requirements established by 23 U.S.C. 143 and is approved by the Secretary of Transportation for construction, reconstruction, or improvement under the provisions of that section.

(j) The term "Geographically Capable" means the ability of an area surrounding a proposed growth center to provide area residents, and residents of the growth center, the opportunity, with reasonable convenience, to commute to or from the center to employment or to other public and private services available in the area.

(k) The term "Public and Private Services" means such services providing health care, transport, education, legal,

employment, recreational, cultural, and other similar services available to the public.

(l) The term "Redevelopment Area" means a county, Indian reservation, or other definable area designated by the Economic Development Administration under a program authorized by Congress to attempt to solve problems caused by high unemployment and low median family income levels.

§ 490.105 Applicability.

(a) The Federal-Aid Highway Act of 1973 continued the Economic Growth Center Development Highway Program, but modified it in three important respects:

(1) 23 U.S.C. 143(a) was amended to eliminate the "demonstration" feature, thereby indicating a congressional intent to make the growth center provision an element of the overall Federal-aid highway program:

(2) The 20 percent add-on or "sweetener" financing provision of the Federal-Aid Highway Act of 1970 was eliminated and authorizations for the 1974, 1975 and 1976 fiscal years were made (in section 104(a) (10)) to provide the same Federal share payable as for any other project on the Federal-aid system on which the development highway is located; and

(3) The program was broadened to include projects on any Federal-aid system except the Interstate System.

(b) This directive applies to all development highway projects under provisions of title 23 U.S.C. 143.

§ 490.107 Implementation.

(a) Highway projects to serve economic growth centers shall be approved by the Division Engineer according to ordinary Federal-aid procedures, provided the Division Engineer is satisfied that the project has a reasonable likelihood of improving the economic and social performance of the growth center.

(b) Economic growth centers approved under 23 U.S.C. 143 prior to the issuance of this directive shall be continued as active centers in the new program until they are replaced by new centers in accordance with § 490.107(c). New highway projects selected to continue improvement of previously approved centers are eligible for immediate approval by the Division Engineer provided he is satisfied that the project has a reasonable likelihood of improving the economic and social performance of the growth center.

(c) New economic growth centers may be recommended by the Governors of the several States in addition to existing centers. However, no State shall have more than three currently active growth centers. New centers may be recommended to replace centers for which funds have been fully obligated for all approved projects, or for which no projects have been initiated. Governors shall submit their recommendations to the Regional Federal Highway Administrator through their State highway agencies.

(d) A Governor's recommendation for a new economic growth center shall be accompanied by economic and demographic data supporting his suggestions and explaining why and how additional highway investment might assist in further developing the potential of the area. Criteria listed in Appendix A of this subpart must be considered by the Governors in recommending growth centers.

(e) The planning studies required for this program shall be broader in scope than the engineering and economic surveys generally required in other Federal-aid highway programs. Each shall consist of an economic base study of the designated growth center and the carefully delineated rural area(s) which the center will serve. The study also shall project the amount, kind and location of economic and/or social development that is expected to occur and the time frame of such expectations, as well as why and how new highway investment, described in general terms, will aid this development.

(f) The economic growth center planning studies shall be in addition to any studies normally required for projects on the Federal-aid system on which the Economic Growth Center Development Highway is located.

(g) The States should review planning done by any agency in the area in which a growth center development highway is to be located.

(h) The requirement that "after" studies be completed to determine the impact of demonstration projects shall continue to apply to all projects under this section for which plans, specifications and estimates were approved prior to August 13, 1973.

(i) Regular Federal-aid procedures applicable to the system on which a

project is located shall be used, except as modified in this subpart.

§ 490.109 Financing.

(a) Section 104(a) (10) of the Federal-Aid Highway Act of 1973 authorizes appropriations out of the Highway Trust Fund to finance the Economic Growth Center Development Highway Program. In addition, unobligated balances remaining from the demonstration program are available for use in the new program.

(b) The requirement in the Federal-Aid Highway Act of 1970 that "the Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under this section shall be increased by not to exceed an additional 20 per centum of the cost of such project, except that in no case shall the Federal share exceed 95 per centum of the cost of such project" shall continue to apply to all projects under 23 U.S.C. 143 for which plans, specifications and estimates were approved prior to the enactment of the Federal-Aid Highway Act of 1973 (August 13, 1973) until such projects are completed. The Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under 23 U.S.C. 143 for which plans, specifications and estimates were or are approved subsequent to enactment of the Federal-Aid Highway Act of 1973 shall be the same as the Federal share payable for the Federal-aid system on which such development highway is located.

(c) Federal-aid funding from two or more Federal-aid highway programs may occur but the Federal share for each must be in accordance with 23 U.S.C. 120 as set forth in Volume 6, Chapter 3, section 2, subsection 2 of the Federal-Aid Highway Program Manual.

§ 490.111 Criteria.

In accordance with 23 U.S.C. 143(f), criteria have been developed to aid Governors in recommending economic growth centers to the Federal Highway Administrator. All criteria are detailed in Appendix A of this subpart and will be utilized by Regional Administrators in their determination as to whether growth centers recommended by the Governors meet the criteria of the Act. These criteria also will be used to guide the selection of individual projects to serve the growth centers.

APPENDIX A

CRITERIA FOR SELECTION AND APPROVAL OF ECONOMIC GROWTH CENTER HIGHWAYS AND DEVELOPMENT HIGHWAY PROJECTS

Requirements for Governors' Submittal to the Regional Federal Highway Administrators. In order to meet the requirements of 23 U.S.C. 143, the Secretary has established through the Federal Highway Administration and in consultation with the Secretary of Commerce and the regional commissions,¹ the following criteria that must be considered by the Governors in recommending growth centers and in establishing a priority listing.

A. Legislative Criteria for Economic Growth Center Selection. 1. Growth centers shall be geographically and economically capable of contributing significantly to the development of the surrounding areas.

2. Growth centers shall have a population not in excess of 100,000 according to the 1970 Federal Census of Population; and

3. The selection of growth centers within the Appalachian region and in the economic development regions, shall take into account the purposes of the Appalachian Regional Development Act of 1965 and the Public Works and Economic Development Act of 1965.

B. Administrative Criteria for Economic Growth Center Selection. Listed below are additional criteria or guidelines to which Governors, in consultation with the State highway departments, and regional development commissions and development or planning agencies, when appropriate, shall direct their attention when recommending economic growth centers for selection. Because of the many objectives of 23 U.S.C. 143, recommended centers need not be related necessarily to any single administrative criterion. Centers could include communities with either demonstrated or potential viability.

1. To obtain maximum development from economic growth center funds, the States are encouraged to concentrate on additional projects serving growth centers approved under the demonstration phase of this program.

2. In recommending new or substitute economic growth centers, Governors shall give top priority to areas included in existing regional development programs. Consideration shall also be given to local development districts established by State and local action under the Appalachian Regional Commission.

a. By giving special consideration in the selection process to growth centers designated under programs which have already received or which are slated to receive additional

amounts of public and private capital investments, a leverage effect on development potential will be exerted.

b. Proper channels of communication should be observed by the State highway agencies with such other regional, State, and local commissions and agencies as are involved under the terms of Title 23 U.S.C. 143. 23 U.S.C. 143(f) requires the Secretary of Transportation, prior to project approval, to consult with the Federal Cochairman of the Appalachian Regional Commission when a project is proposed to be conducted in the Appalachian region, as defined in section 403 of the Appalachian Regional Development Act of 1965, and with the Secretary of Commerce when a project is proposed in an economic development region as defined in Title V of the Public Works and Economic Development Act of 1965. In fulfillment of this requirement, the States, when submitting growth center projects for approval, shall include in their submissions a statement of the attitudes and reactions of the above agencies.

3. Communities or centers also may be recommended for selection even though they are not included in ongoing regional development programs if they offer possibilities for growth through natural resource development or other industrial or commercial activities. Prospective growth centers possessing the following attributes will merit special consideration because of demonstrated viability:

a. Centers which provided during the past decade, or in a more recent period, significant employment and residence opportunities for residents from nearby or surrounding rural counties.

b. Centers or communities which have been growing in a relative sense to the surrounding area or region; i.e., centers which during the past decade, or in a more recent period, evidenced high average wage levels or faster population and/or employment growth relative to surrounding rural counties and/or the region.

c. Communities which evidence potential viability based on private and public plans and data submitted, also may be recommended. It is conceivable that some communities may have shown little or even no growth over the past decade, but have definitely served an important function as a service and employment center for the surrounding rural areas and have inherent but untapped growth potential. Had this role not been played by the recommended center, the surrounding counties, though possibly stagnant during recent decades, might have suffered even further decline in economic performance. If such a role will likely continue into the future, or if prospects are favorable for future growth because of industry location plans and governmental investment, such communities may be recommended as economic growth centers. Data on such further prospects should be forwarded by the respective Governors to-

¹ Regional Commissions refer to the Appalachian Regional Commission and the commissions established under Title V of the Public Works and Economic Development Act of 1965.

gether with data on boundaries of operationally defined service or trade areas, measured, perhaps, by newspaper routes, commuting patterns, or labor market boundaries.

d. The ability to support future growth may be integrally related to the diversification of the economic base of a community. Such diversification would be indicated by a wide variety of manufacturing or service industry activities (as measured, for instance, by the proportion of the total work force employed in each of the activities, or by the proportion of total income earned in each of the activities) providing goods and services to both local and regional or national markets.

e. A community's viability may also be indicated by the availability of existing or planned alternative transportation systems including publicly owned airport and water-port facilities.

f. Other indicators of the capability of proposed growth centers include, but are not limited to:

(1) Availability of adjacent land suitable for industrial commercial development,

(2) Availability of adequate water resources for human, industrial, and commercial consumption, and

(3) Utilities, schools, and other public services adequate to meet the community's current and future needs.

4. Consideration should be given to new towns or communities in rural settings. Such communities may also be eligible for financial and other assistance for highway projects under Section 710 of the Housing and Urban Development Act of 1970. Additionally, newly developed communities may be used for the testing and development of

technological, physical, and institutional innovation applicable to other communities and areas. New towns which are satellite or bedroom communities of metropolitan areas are not the types of communities to which this legislation is addressed.

C. *Other Requirements.* 1. *Proposed* growth centers including an urban area of 50,000 population or more shall meet the requirements for urban transportation planning specified in Title 23, U.S.C. 134.

2. When recommending centers for approval Governors should submit summaries of any formal private or public plans related to the economic and social development of a proposed growth center and surrounding areas, if these have been developed. The availability of such a plan is not mandatory, although existence of a formal economic development planning process indicates the extent of community and regional interest in development. When such plans are unavailable, Governors shall submit relevant social and economic data to support their rationale for selection. Such data should illustrate the present condition of the center and target areas, major impediments to development; present intermodal transportation facilities and their linkages to the growth center, markets, the rural hinterland, and the overall transportation network; and the possible impact upon the area and region resulting from more adequate transportation connections. Estimates of the expected impact of the highway program in conjunction with the public and private programs are important in determining priorities for growth center selection and approval.

[40 FR 2581, Jan. 14, 1975]

PARTS 491—499 [RESERVED]

SUBCHAPTER F—RESEARCH AND DEVELOPMENT

PARTS 500—599 [RESERVED]

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PARTS 600—619 [RESERVED]

PART 620—ENGINEERING

Subpart A—Highway Improvements in the Vicinity of Airports

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620.315	Changes or extra work.

AUTHORITY: 23 U.S.C. 315 and 318; 49 CFR 1.48; 23 CFR 1.32.

Subpart A—Highway Improvements in the Vicinity of Airports

SOURCE: 39 FR 35145, Sept. 30, 1974, unless otherwise noted.

§ 620.101 Purpose.

The purpose of this section is to implement Title 23 United States Code, section 318 which requires coordination of

airport and highway developments to insure (a) that airway-highway clearances are adequate for the safe movement of air and highway traffic, and (b) that the expenditure of public funds for airport and highway improvements is in the public interest.

§ 620.102 Applicability.

The requirements of this section apply to all projects on which Federal-aid highway funds are to be expended and to both civil and military airports.

§ 620.103 Policy.

(a) Federal-aid highway funds shall not participate in the costs of reconstruction or relocation of any highway to which this section applies unless the Federal Highway Administration (FHWA) and State officials, in cooperation with the Federal Aviation Administration (FAA) or appropriate military authority, or in the case of privately owned airports, the owner of that airport, determine that the location or extension of the airport in question and the consequent relocation or reconstruction of the highway is in the public interest.

(b) In addition to complying with 23 U.S.C. 318 and insuring the prudent use of public funds, it is the policy of FHWA to provide a high degree of safety in the location, design, construction and operation of highways and airports.

(c) Federal-aid funds shall not participate in projects where substandard clearances are created or will continue to exist.

§ 620.104 Standards.

A finding of public interest by FHWA will be based on compliance with airway-highway clearances which conform to FAA standards for aeronautical safety.

Subpart B—Relinquishment of Highway Facilities

SOURCE: 39 FR 33311, Sept. 17, 1974, unless otherwise noted.

§ 620.201 Purpose.

To prescribe Federal Highway Administration (FHWA) procedures relating to relinquishment of highway facilities.

§ 620.202 Applicability.

The provisions of this section apply to highway facilities where Federal-aid funds have participated in either right-of-way or physical construction costs of a project.

§ 620.203 Procedures.

(a) After final acceptance of a project on the Federal-aid primary, urban, or

secondary system or after the date that the plans, specifications and estimates (PS&E) for the physical construction on the right-of-way for a Federal-aid Interstate project have been approved by the FHWA, relinquishment of the right-of-way or any change made in control of access shall be in accordance with the provisions of this section. For the purposes of this section, final acceptance for a project involving physical construction is the date of the acceptance of the physical construction by the FHWA and for right-of-way projects, the date the division engineer determines to be the date of the completion of the acquisition of the right-of-way shown on the final plans.

(b) For the purposes of this section, "relinquishment" is defined as the conveyance of a portion of a highway right-of-way or facility by a State highway agency (SHA) to another Government agency for highway use.

(c) The following facilities may be relinquished in accordance with paragraph 203(f):

(1) Sections of a State highway which have been superseded by construction on new location and removed from the Federal-aid system and the replaced section thereof is approved by the FHWA as the new location of the Federal-aid route. Federal-aid funds may not participate in rehabilitation work performed for the purpose of placing the superseded section of the highway in a condition acceptable to the local authority. The relinquishment of any Interstate mileage shall be submitted to the Federal Highway Administrator as a special case for prior approval.

(2) Sections of reconstructed local facilities that are located outside the control of access lines, such as turnarounds of severed local roads or streets adjacent to the Federal-aid project's right-of-way, and local roads and streets crossing over or under said project that have been adjusted in grade and/or alignment, including new right-of-way required for adjustments. Eligibility for Federal-aid participation in the costs of the foregoing adjustments is as determined at the time of PS&E approval under policies of the FHWA.

(3) Frontage roads or portions thereof that are constructed generally parallel to and outside the control of access lines of a Federal-aid project for the purpose of permitting access to private properties rather than to serve as extensions of

ramps to connect said Federal-aid project with the nearest crossroad or street.

(d) The following facilities may be relinquished only with the approval of the Federal Highway Administrator in accordance with paragraph 203(g).

(1) Frontage roads or portions thereof located outside the access control lines of a Federal-aid project that are constructed to service (in lieu of or in addition to the purposes outlined under paragraph (c) (3) of this section) as connections between ramps to or from the Federal-aid project and existing public roads or streets.

(2) Ramps constructed to serve as connections for interchange of traffic between the Federal-aid project and local roads or streets.

(e) Where a frontage road is not on an approved Federal-aid system title to the right-of-way may be acquired initially in the name of the political subdivision which is to assume control thus eliminating the necessity of a formal transfer later. Such procedure would be subject to prior FHWA approval and would be limited to those facilities which meet the criteria set forth in paragraph (c) (2) and (3) of this section.

(f) Upon presentation by a State that it intends to relinquish facilities such as described in paragraph (c) (1), (2) or (3) of this section to local authorities, the division engineer of the FHWA shall have appropriate field and office examination made thereof to assure that such relinquishments are in accordance with the provisions of the cited paragraphs. Relinquishments of the types described in paragraph (c) (1), (2) or (3) of this section may be made on an individual basis or on a project or route basis subject to the following conditions and understandings:

(1) Immediately following action by the State in approving a relinquishment, it shall furnish to the division engineer for record purposes a copy of a suitable map or maps identified by the Federal-aid project number, with the facilities to be relinquished and the date of such relinquishment action clearly delineated thereon.

(2) If it is found at any time after relinquishment that a relinquished facility is in fact required for the safe and proper operation of the Federal-aid highway, the State shall take immediate action to restore such facility to its jurisdiction without cost to Federal-aid highway funds.

(3) If it is found at any time that a relinquished frontage road or portion thereof or any part of the right-of-way therefor has been abandoned by local governmental authority and a showing cannot be made that such abandoned facility is no longer required as a public road, it is to be understood that the Federal Highway Administrator may cause to be withheld from Federal-aid highway funds due to the State an amount equal to the Federal-aid participation in the abandoned facility.

(4) In no case shall any relinquishment include any portion of the right-of-way within the access control lines as shown on the plans for a Federal-aid project approved by the FHWA, without the prior approval of the Federal Highway Administrator.

(5) There cannot be additional Federal-aid participation in future construction or reconstruction on any relinquished "off the Federal-aid system" facility unless the underlying reason for such future work is caused by future improvement of the associated Federal-aid highway.

(g) In the event that a State desires to apply for approval by the Federal Highway Administrator for the relinquishment of a facility such as described in paragraph (d) (1) and (2) of this section, the facts pertinent to such proposal are to be presented to the division engineer of the FHWA. The division engineer shall have appropriate review made of such presentation and forward the material presented by the State together with his findings thereon through the Regional Federal Highway Administrator for consideration by the Federal Highway Administrator and determination of action to be taken.

(h) No change may be made in control of access, without the joint determination and approval of the SHA and FHWA. This would not prevent the relinquishment of title, without prior approval of the FHWA, of a segment of the right-of-way provided there is an abandonment of a section of highway inclusive of such segment.

(i) Relinquishments must be justified by the State's finding, concurred in by the FHWA, that:

(1) The subject land will not be needed for Federal-aid highway purposes in the foreseeable future;

(2) That the right-of-way being retained is adequate under present day standards for the facility involved;

(3) That the release will not adversely affect the Federal-aid highway facility or the traffic thereon;

(4) That the lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant with the intent of 23 U.S.C. 319 and PL 89-285, Title III, sections 302-305 (Highway Beautification Act of 1965).

(j) If a relinquishment is to a Federal, State or local governmental agency for highway purposes, there need not be a charge to the said agency, nor in such event any credit to Federal funds. If for any reason there is a charge to the said agency and Federal funds participated in the cost of the right-of-way, there shall be a credit to Federal funds on the same basis Federal funds participated in the cost of the right-of-way.

Subpart C—Engagement of Consultants for Engineering Services

SOURCE: 39 FR 36328, Oct. 9, 1974, unless otherwise noted.

§ 620.301 Purpose and applicability.

(a) The purpose of this subpart is to prescribe policies and procedures regarding the engagement of consultants to perform engineering services under agreements with State highway departments, or with cities or counties, under agreement with the State, when Federal-aid funds are furnished for participation in the cost of the engineering services.

(b) The procedures prescribed herein do not apply to projects or, unless otherwise provided, to those parts of projects financed with Federal-aid highway planning and research funds.

§ 620.303 Engagement of consultants.

(a) Consultants may be engaged by a State, or by a county or a city under an agreement with the State, to perform preliminary engineering or construction engineering services for Federal-aid highway projects. Requests for Federal-aid participation in the costs of such services shall include a definite proposal by the consultant, accompanied by a statement by a State highway department, county, or city, showing the adequacy of the consultant's qualifications for the specific services to be performed, the appropriateness of the methods of payment, and the reasonableness of the amount of compensation proposed.

(b) When a county or city proposes to engage the services of a consultant, any agreement entered into for such services shall be subject to the prior approval of the State highway department and the Federal Highway Administration (FHWA), and all provisions in this subpart concerning engagement of consultants by State highway departments shall apply. Nothing herein shall be taken as relieving the State of its responsibility under the Federal-aid laws and regulations for the work to be performed under any agreements entered into by a county or city.

(c) Audit requirements for administering consultant agreements are set forth in 23 CFR Part 170.

§ 620.305 Qualification and selection.

(a) The selection of a consultant shall be based on comparative evaluations of the professional qualifications necessary for satisfactory performance of the services required, and the consideration of available consultants so qualified shall be deemed to satisfy requirements for competition.

(b) The State highway department shall have on file with the FHWA an approved and current statement of the procedures it uses:

(1) In determining the engagement of consultants to be necessary or desirable.

(2) In evaluating the qualifications of prospective consultants.

(3) In selecting a specific firm from those determined to be qualified with which to negotiate for the services desired.

(4) In monitoring work in progress under active agreements.

(c) The consultants shall be required to perform with his own organizations and associate consultants acceptable to the State and FHWA the professional services imposed the agreement. The consultant may utilize, with prior consent of the State highway department other firms to perform supplemental specialized services such as aerial and ground surveys, obtaining borings, making of exhibits, and other work or services.

§ 620.307 Compensation.

(a) Compensation to the consultant should represent a just and equitable payment for the services performed.

(b) The method of payment to compensate the consultant for all work required shall be set forth in the original agreement and in any supplemental agreements thereto.

(c) Methods of payment which may be used are as follows:

- (1) Lump sum.
- (2) Cost per unit of work.
- (3) Cost plus a net fee amount.
- (4) Specific rates of compensation.

This method shall be considered only if all other methods have been found by the FHWA to be inappropriate.

(d) Consultant agreements providing that payment is to be based or adjusted on a prescribed percentage of estimated or actual construction costs, or based on actual engineering cost times a multiplier will not be accepted for Federal-aid reimbursement.

(e) The consultant's actual costs, direct and indirect, eligible for Federal participation in cost plus a net fee contracts shall be those allowable under the provisions of Subpart 1-15.2, Federal Procurement Regulations, Principles and Procedures for use in Cost-Reimbursement Type Supply and Research Contracts with Commercial Organizations, Title 41, Code of Federal Regulations, or State procurement regulations accepted by the FHWA.

(f) When the method of payment is other than a lump sum, the agreement shall specify an upper limit of compensation.

§ 620.309 Construction engineering services.

A consultant may be utilized for periodic examination and consultation or for full-time technical inspection of construction. However, the prime responsibility for general supervision of the construction remains with the State highway department. The State highway department (or county or city under agreement with the State highway department) cannot be relieved of its responsibility to insure that the work is performed in accordance with the approved project plans, specifications, and estimate. Therefore, a full-time publicly employed engineer must be assigned to be in responsible charge of the project at all times, although the publicly employed engineer need not be assigned solely to that project.

[39 FR 36328, Oct. 9, 1974; 39 FR 38097, Oct. 29, 1974]

§ 620.311 Content and approval of agreements.

(a) Proposed agreements for consultant services shall be submitted to the FHWA for review to insure that appropriate features are incorporated, that objectionable features or clauses are not included, and that the method of payment is proper and the amount reasonable.

(b) The agreement shall provide for reviews, at appropriate stages during performance of the work, by the State highway department and the FHWA. It shall also provide that the prospective consultant shall agree to establish a working office at a place acceptable to the State highway department and the FHWA for such review and discussion of the work as it progresses.

(c) The agreement shall provide that the consultant and his subcontractors are to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, and further, to make such materials available at their respective offices at all reasonable times during the contract period and for 3 years from the date of final payment under the contract. Such materials are to be available for inspection by authorized representatives of the State highway department or of the Federal Government, and copies thereof shall be furnished if requested.

(d) Agreements with consultants under the provisions of this directive shall not be approved by the FHWA unless a certification is executed by principal or authorized corporate official of the consultant retained for the Federal-aid project involved, to the effect that neither he nor his firm has:

(1) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for him or the consultant) to solicit or secure the agreement;

(2) Agreed, as an express or implied condition for obtaining the contract, to employ or retain the services of any firm or person in connection with carrying out the agreement, or

(3) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for him or the consultant) any fee, contribution, donation, or consideration of any

kind for, or in connection with, procuring or carrying out the agreement.

(e) Agreements with consultants under the provisions of this directive shall not be approved by the FHWA unless a certification is executed by principal administrative officer of the Government agency responsible for selection of the consultant and for administration of the agreement, to the effect that the consultant or his representative has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out the agreement to:

(1) Employ or retain, or agree to employ or retain, any firm or person, or

(2) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

§ 620.313 Alternative procedure.

(a) As an alternative to the procedures set forth elsewhere in this subpart:

(1) The State highway department, at its option, may obtain approval of the FHWA of an administrative plan under which the State highway department would certify the procedures by which consultants would be utilized to provide engineering services to be financed with Federal-aid primary, secondary, urban, or TOPICS funds; this administrative planning is not to be considered for engineering services to be financed with Federal-aid Interstate funds.

(2) To the extent a State highway department's plan is found acceptable by the Regional Federal Highway Administrator, FHWA approval of individual agreements or their supplements is not required. This alternative procedure may be approved for use in any State desiring to adopt it when the requirements specified in § 620.303(b) are found by the Regional Federal Highway Administrator to be satisfied. Until this procedure has been approved by the FHWA, the procedures set forth elsewhere in this subpart are to continue in effect.

(b) The State highway department is to file a formal application with the FHWA for approval of the alternative procedure which shall include the State highway department's written procedures for:

(1) Selecting the consultant using the approved procedures for qualification and selection.

(2) Evaluating a proposal from the consultant selected.

(3) Determining that the agreement provisions are satisfactory.

(4) Determining that the method of payment is appropriate and the amount of proposed compensation to the consultant is reasonable, and

(5) Documenting the file regarding compliance in each case.

(c) The application shall also include statement signed by the chief administrative officer of the State highway department certifying that there shall be conformance with the provisions of this subpart and all applicable Federal and State laws and administrative requirements.

§ 620.315 Changes or extra work.

Supplemental agreements approved by FHWA, are required for any modification in the terms of the original agreement to provide for change or extra work.

PARTS 621—624 [RESERVED]

PART 625—DESIGN STANDARDS FOR FEDERAL-AID HIGHWAYS

Sec.

625.1 Purpose.

625.2 Definitions.

625.3 Standards, specifications, policies, and guides.

625.4 Approvals.

AUTHORITY: 23 U.S.C. 109 (a) through (e).

SOURCE: 39 FR 35145, Sept. 30, 1974, unless otherwise noted.

§ 625.1 Purpose.

This part designates those standards, specifications, policies, and guides that are acceptable to the Federal Highway Administration (FHWA) for application in the geometric and structural design and traffic control features of Federal-aid highway projects.

§ 625.2 Definitions.

(a) Highway design standards and specifications are those design principles and dimensions derived from basic engineering knowledge, experience, research, and judgment that are officially desig-

nated and adopted by highway authorities as the specific controls for design of highways.

(b) Highway design policies are general procedures and controls which are less specific than design standards, often with a range of acceptable values, and which are officially adopted or accepted for application in the design of highways.

(c) Highway design guides include information and general controls that are more flexible and indefinite than policies but which are valuable in attaining good design and in promoting uniformity.

§ 625.3 Standards, specifications, policies and guides.

The following standards and specifications, policies and guides are approved by the FHWA for application on Federal-aid projects.¹

(a) *Standards and specifications.* (1) Geometric Design Standards for Highways Other than Freeways, AASHTO 1969.²

(2) Geometric Design Standards for the National System of Interstate and Defense Highways, AASHTO 1967.³

(3) Geometric Design Guide for Local Roads and Streets, AASHTO 1970.⁴ The minimum values therein will be applied to determine the acceptability of low volume roads and streets except that approval is not to be given for design speeds less than 30 mph or for retention of bridges having less than approach-traveled way width.

(4) Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA 1971.⁵

(5) Recommended Practices for Railroad-Highway Grade Crossing Warning Systems. Bulletin No. 7. Association of American Railroads, 1974.⁶

(6) Standard Specifications for Highway Bridges, Eleventh Edition, AASHTO 1973, as amended.⁷

(7) Standard Specifications for Movable Highway Bridges, AASHTO 1970.⁸

(8) Specifications for Design and Construction of Structural Supports for Highway Signs, AASHTO 1968.⁹

(9) Specifications for the Design and Construction of Structural Supports for Highway Luminaires, AASHTO 1970, as amended.²

(10) Standard Specifications for Welding of Structural Steel Highway Bridges, AASHTO 1974.²

(b) *Policies.* (1) A Policy on Geometric Design of Rural Highways, AASHTO 1965.¹

(2) A Policy on Design of Urban Highways and Arterial Streets, AASHTO 1973.²

(3) A Policy on Locating Police Stations and Maintenance Yards Serving Interstate Highways, AASHTO 1959.³

(4) A Policy on the Accommodation of Utilities on Freeway Rights-of-Way, AASHTO 1969.⁴

(5) A Policy on U-Turn Median Openings on Freeways, AASHTO 1960.⁵

(6) A Policy on Access Between Adjacent Railroads and Interstate Highways, AASHTO 1960.⁶

(7) A Policy on Design Standards for Stopping Sight Distances, AASHTO 1971.⁷

(c) *Guides.* (1) Highway Definitions, AASHTO 1968.¹

(2) Highway Design and Operational Practices Related to Highway Safety, Report of the Special AASHTO Traffic Safety Committee, AASHTO 1974.²

(3) A Guide for Bicycle Routes, AASHTO 1974.³

(4) Guide Specifications for Highway Construction, AASHTO 1972.⁴

(5) Highway Drainage Guidelines, Volumes I, II, and III, AASHTO 1973.⁵

(6) Highway Barriers, NCHRP Report 118—Location Selection and Maintenance of Highway Traffic Barriers, Highway Research Board (HRB) 1971.⁶

(7) Interim Guide for Design of Pavement Structures, AASHTO 1972.⁷ Pavement design may be based upon procedures and practices of individual agencies that by past performance have proved satisfactory for the pertinent conditions; however, the Federal Highway Administration will use this guide to evaluate the adequacy of the design proposed.

(8) A Guide for Highway Landscape and Environmental Design, AASHTO 1970.⁸

(9) A Guide on Safety Rest Areas for the National System of Interstate and Defense Highways, AASHTO 1968.⁹

See footnotes at end of part.

(10) An Informational Guide for Roadway Lighting, AASHO 1969.²

(11) Standards Specifications for Transportation Materials and Methods of Sampling and Testing, AASHTO, 1974.²

(12) A Guide for Erecting Mailboxes on Highways, AASHO 1969.²

(13) A Guide for Protective Screening of Overpass Structures, AASHO 1969.²

(14) An Informational Guide on Fencing Controlled Access Highways, AASHO 1967.²

(15) An Information Guide for Preparing Private Driveway Regulations for Major Highways, AASHO 1960.²

(16) Highway Capacity, Special Report 87, Highway Capacity Manual, HRB 1965.⁵

(17) Handbook of Highway Safety Design and Operating Practices, FHWA 1973.⁴

[39 FR 35145, Sept. 30, 1974; 40 FR 2179, Jan. 10, 1975]

§ 625.4 Approvals.

(a) Approval may be given to project plans, specifications and estimates that are found to be in conformance with the standards and specifications, policies and guides as enumerated in § 625.3.

(b) Exceptions. Approval may be given to designs on a project basis which do not conform to the minimum criteria set forth in the standards and policies listed in § 625.3 (a) and (b) under the following conditions:

(1) Projects for the highway safety improvement program;

(2) Projects involving experimental features; and

APPENDIX A—DOCUMENTS CITED IN PART 625

¹ These documents may be reviewed at the Department of Transportation Library, Room 2200, DOT Headquarters Building, 400-7th Street SW., Washington, D.C. 20590.

² American Association of State Highway and Transportation Officials, 341 National Press Building, Washington, D.C. 20045.

³ Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

⁴ Association of American Railroads, American Railroads Building, Washington, D.C. 20036.

⁵ Transportation Research Board, National Academy of Sciences, 2101 Constitution Avenue NW., Washington, D.C. 20418.

(3) Other projects where unusual conditions warrant that exception be made.

The determination to approve a project design that does not conform to the minimum criteria is to be made only after due consideration is given to all project conditions such as maximum service and safety benefits for the dollar invested, compatibility with remaining sections of unimproved roadway, and the probable time before reconstruction of the section due to increased traffic demands. Projects which include provisions to retain angle parking may be approved if an engineering analysis shows that such parking will not create a hazardous condition and restrict the usable roadway section so as to impede traffic flow.

(c) The Guides are not project requirements and no specific approval for deviations from the guides is required.

PARTS 626—629 [RESERVED]

PART 630—PRECONSTRUCTION PROCEDURES

Subpart A—[Reserved]

Subpart B—Plans, Specifications, and Estimates Sec.

- 630.201 Purpose.
- 630.202 Applicability.
- 630.203 Submission and approval.
- 630.204 Policies and guidance for preparation.

Subpart C—Project Agreements

- 630.301 Purpose.
- 630.302 Definitions.
- 630.303 Policy.
- 630.304 Preparation of agreement.
- 630.305 Agreement- provisions regarding overruns in contract time.
- 630.306 Modification of original agreement.

Appendix A—Federal-Aid Project Agreement, Form PR-2.

Appendix B—Modification to Federal-Aid Project Agreement, Form PR-2A.

Appendix C—Federal-Aid Project Agreement (National Cooperative Highway Research Program), Form PR-2.1.

Subpart D—Geodetic Markers

- 630.401 Purpose.
- 630.402 Policy.
- 630.403 Initiation of projects.
- 630.404 Standards.

Subpart E—Emergency Funds Procedures

- 630.501 Purpose.
- 630.502 Definitions.

- Sec.
 630.503 Emergency funds.
 630.504 Requirements.
 630.505 Limitations.
 630.506 Federal share payable.
 630.507 Eligibility of work.
 630.508 Submission of programs and allocation of funds.
 630.509 Processing of emergency projects.
 630.510 Expediting emergency projects.

Subpart F—Federal Participation in Cost of Disposal of Existing Highway Bridges

- 630.601 Purpose.
 630.602 Definitions.
 630.603 Policy.
 630.604 Applications.
 630.605 Material assigned to contractor.
 630.606 Material retained by State.

Subpart G—Advance Construction of Federal-Aid Projects

- 630.701 Purpose.
 630.702 Requirements and conditions.
 630.703 Approval actions.
 630.704 Conversion to Federal-Aid projects.

Subpart H—Bridges on Federal Dams

- 630.801 Purpose.
 630.802 Applicability.
 630.803 Procedures.

AUTHORITY: 23 U.S.C. 101(a), 104, 110, 113, 115, 120(f), 121(c), 125, 315, 320; 23 CFR 1.32, 49 CFR 1.48(b).

Subpart A—[Reserved]

Subpart B—Plans, Specifications, and Estimates

SOURCE: 39 FR 36473, Oct. 10, 1974, unless otherwise noted.

§ 630.201 Purpose.

The purpose of this part is to prescribe policies and procedures to implement 23 U.S.C. 106(a) relating to the preparation, submission and approval of plans, specifications and estimates and supporting documents for Federal-aid projects, commonly referred to as PS&E.

§ 630.202 Applicability.

The provisions of this part apply to all highway construction projects financed in whole or in part with Federal-aid highway funds and to be undertaken by a State or political subdivision thereof pursuant to agreements between the State highway department and the Federal Highway Administration (FHWA), except for projects carried out pursuant to 23 U.S.C. 117 relative to certification

acceptance or a secondary road plan as appropriate.

§ 630.203 Submission and approval.

(a) PS&E assemblies for Federal-aid highway projects shall be submitted to the FHWA for approval.

(b) The contents and number of copies of the PS&E assembly shall be determined by the FHWA.

(c) The State highway department shall be advised of approval of the PS&E by the FHWA.

(d) No project or part thereof for actual construction shall be advertised for contract nor work commenced by force account until PS&E have been approved by the FHWA and the State highway department has been so notified.

§ 630.204 Policy and guidance for preparation.

Plans and specifications shall describe the location and design features and the construction requirements in sufficient detail to facilitate the construction, the contract control and the estimation of construction costs of the project. The estimate shall reflect the anticipated cost of the project in sufficient detail to provide an initial prediction of the financial obligations to be incurred by the State and FHWA and to permit an effective review and comparison of the bids received.

Subpart C—Project Agreements

SOURCE: 39 FR 35348, Oct. 1, 1974, unless otherwise noted.

§ 630.301 Purpose.

The purpose of the regulations in this subpart is to prescribe the form and procedures for the preparation and execution of the project agreement required by 23 U.S.C. 110(a) for Federal-aid projects, except for forest highway projects pursuant to 23 U.S.C. 204, and for non-highway public mass transit projects pursuant to 23 U.S.C. 103(e) (4), 142(a) (2), and 142(c).

§ 630.302 Definitions.

(a) The term "bond issue project" means a project authorized pursuant to 23 U.S.C. 122.

(b) The term "calendar day" means each day shown on the calendar but, if another definition is set forth in the State contract specifications, that definition will apply.

(c) The term "certification acceptance project" means a project which is constructed under the terms of a State Certification as authorized by 23 U.S.C. 117 and 23 CFR Part 640.

(d) The term "contract time" means the number of workdays or calendar days specified in a contract for completion of the contract work. The term includes authorized time extensions.

(e) The term "Division Engineer" means the chief Federal Highway Administration (FHWA) officer assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

(f) The term "Federal-aid highway project" means a project, other than an HP&R project, funded in whole or in part, with sums apportioned pursuant to Title 23, United States Code and section 203(d) of the Highway Safety Act of 1973.

(g) The term "highway planning and research project" (HP&R) means a project funded pursuant to 23 U.S.C. 307(c) and 104(f).

(h) The term "liquidated damages" means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a State highway agency because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

(i) The term "State highway agency" has the same meaning as that given for "State highway department" in 23 U.S.C. 101.

(j) The word "workday" means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

[39 FR 35348, Oct. 1, 1974, as amended at 40 FR 6491, Feb. 12, 1975]

§ 630.303 Policy.

(a) The State highway agency shall prepare a project agreement for each Federal-aid highway, and highway planning and research project eligible for Federal-aid funding. An original agreement shall be prepared on FHWA Form PR-2 (Appendix A), and amendments to or modification of such original agreement shall be prepared on FHWA Form PR-2A (Appendix B). Agreements

for projects under the National Cooperative Highway Research Program (NCHRP) shall be prepared on FHWA Form PR-2.1 (Appendix C).

(b) Project agreements, and modifications of and amendments thereto, shall evidence acceptance by the State highway agency of:

(1) Conditions to payment of Federal funds as prescribed by Federal statutes and regulations; and

(2) The amount of Federal funds obligated.

§ 630.304 Preparation of agreement.

(a) The purposes of the Form PR-2 are:

(1) To cover the various types of projects and kinds of work to be undertaken;

(2) To indicate the effective date governing reimbursement of the Federal share of eligible items of cost;

(3) To show the total amount of Federal funds obligated and under agreement for the project; and

(4) To set forth any special provisions relating to the project.

(b) Except for NCHRP projects (which shall be executed in the FHWA Washington Headquarters Office), the Division Engineer, pursuant to his delegated authority, shall, on behalf of FHWA, execute the project agreement or modification or amendment thereof, when he is satisfied that the agreement or modification or amendment thereof, is properly prepared and not at variance with any statutory or regulatory requirement pursuant to Federal laws.

(c) The Form PR-2 shall be utilized as follows:

(1) All information normally required for proper preparation of Form PR-2 can be placed on the first page of the form. All signatures will appear on that page in the spaces provided. Separate project agreements will be prepared for each successive improvement or independent class of work subject to Federal funding that is not to be performed contemporaneously with other work, between the same termini.

(2) Pages 2 and 3 of Form PR-2 contain special provisions to apply to agreements for individual projects. The special provisions which apply to a particular project will be governed by the project identification determined in accordance with Vol. 6, Chap. 3, section 2 of the Federal-Aid Highway

Program Manual. Those special provisions applicable to a particular project become automatically incorporated in the project agreement by means of such project identification.

(3) Space is provided on page 4 of Form PR-2 for listing additional provisions applicable to a particular project. If necessary, attachments to Form PR-2 may be made. This space will also be utilized as follows:

(i) When Federal funds are to participate in the cost of constructing a toll facility, to reference the agreement required by 23 U.S.C. 129;

(ii) When a Federal agency is to undertake a Federal-aid project, to reference the agreement between the State and such Federal agency required by 23 U.S.C. 132, and to set forth the amount of the State deposit or payment to such Federal agency.

(iii) When a State is to undertake federally financed or assisted work on public lands highways (23 U.S.C. 209) or defense access highways (23 U.S.C. 210), to reference the applicable section of Title 23, United States Code.

(iv) When there is an agreement between the State and a local unit of Government with provisions for parking regulations and traffic control.

(4) For HP&R project, no entry will be made in the space labeled "COUNTY." For all other projects, the county or counties in which the project is located will be shown.

(5) The space labeled "PROJECT TERMINI" is for identifying the location of projects by termini, such as "three miles east of Excell to four miles west of Clark." The U.S., State, or county route number, if any, shall be shown, or indication given that the project is located on a county or local road. Engineering stations may not be used. Special Highway Planning and Research Projects shall be identified in this space by project type (National Pooled Fund Studies (NPFS)) or (Intra-Regional Cooperative Studies (IRCS)) and title of the study.

(6) The spaces under the heading "EFFECTIVE DATE OF AUTHORIZATION" will be utilized to show the date subsequent to which any item of cost set forth in the spaces specifically labeled under the heading "PROJECT CLASSIFICATION OR CLASS OF WORK" is eligible for Federal participation.

(7) The space labeled "OTHER" under the heading "PROJECT CLASSIFICA-

TION OR CLASS OF WORK" will be used to set forth a project classification or class of work not specifically labeled in the spaces immediately above "OTHER."

(8) In the spaces labeled "APPROXIMATE LENGTH (Miles)" the length of preliminary engineering and construction work will be shown to the nearest tenth of a mile.

(9) In the space labeled "ESTIMATED TOTAL COST OF PROJECT" the sum of the estimated costs for all project classifications or classes of work set forth above in the agreement as applicable to the particular project will be entered. For construction work, the amount entered will be based on the contract price plus contingencies and/or the force account estimates approved by the Division Engineer.

(10) In the space labeled "FEDERAL FUNDS" the sum of the Federal funds for all project classifications or classes of work as applicable to the particular project will be entered. For bond issue projects and projects to be constructed in advance of apportionments pursuant to 23 U.S.C. 115, the amount entered will be based on an estimate of Federal funds to be subsequently apportioned. Any portion of a project being retained in a "programmed only" status shall not be included in a project agreement.

(d) Three copies of the agreement will be executed by the proper officer of the State highway agency and forwarded to the Division Engineer for review and execution. The Division Engineer will retain the original agreement as part of the project status records. One executed copy will be returned to the State highway agency. The third copy will be sent to the Washington Office and, when required by the regional office, a conformed copy will be sent to that office.

(e) HP&R agreements will be prepared and executed when the State has been authorized to proceed with the HP&R work program in whole or in part. If the agreement covers only a part of the work program, it shall be amended at the time or times when the State is authorized to proceed with the remaining part or parts. Agreements for Special Highway Planning and Research projects will be prepared and executed separately from the annual HP&R agreements.

§ 630.305 Agreement provisions regarding overruns in contract time.

(a) Assessment of liquidated damages will be by means of deductions, at a

specified rate per calendar day or workday for each day of overrun in contract time, from payments otherwise due for performance in accordance with the contract terms.

(b) The Federal Highway Administration has established, based upon its estimate of average construction engineering costs to the State, a schedule of deductions for each day of overrun in contract time. That schedule follows:

SCHEDULE OF DEDUCTIONS FOR EACH DAY OF OVERRUN
IN CONTRACT TIME

Original contract amount (or the engineer's estimate of the total construction cost)	Daily charge	
	Calendar day	Work day
0 to \$25,000.....	\$30	\$42
\$25,000 to \$50,000.....	50	70
\$50,000 to \$100,000.....	75	105
\$100,000 to \$500,000.....	100	140
\$500,000 to \$1,000,000.....	150	210
\$1,000,000 to \$2,000,000.....	200	280
\$2,000,000 plus.....	300	420

A State may establish, based upon construction engineering costs applicable to projects in that State, a schedule of liquidated damages in greater or lesser amounts than prescribed in the schedule set forth above. If a schedule for lesser amounts is established, it may be used in lieu of the schedule set forth above, if the State furnishes the Division Engineer with facts which convince him that the lesser schedule is sufficient to cover average daily construction engineering costs on State Federal-aid highway contracts of similar scope of work and in the applicable contract amount. If a schedule for greater amounts is established by a State, that schedule shall be used in lieu of the schedule set forth above.

(c) When there has been an overrun in contract time, the following principles apply to determine the reduction in the amount of the State cost of a project that is eligible for Federal-aid reimbursement:

(1) Where construction engineering is claimed as a participating item on the

basis of actual expenses incurred, the State's total construction engineering costs for the total contract construction work eligible for Federal reimbursement shall be reduced, rather than the State's pro rata share thereof, by the appropriate amounts in the schedule of deductions set forth above for each calendar day or workday as the case may be, of overrun in contract time. Furthermore, the total contract construction amount eligible for Federal participation is to be reduced by the amount the calculated deduction exceeds construction engineering costs.

(2) Where the State is being reimbursed for construction engineering on the basis of an approved percentage of the participating construction cost, or where construction engineering is not claimed as a participating item, the total contract construction amount that would be eligible for Federal participation shall be reduced by the appropriate amount in the schedule of deductions set forth above for each calendar day or workday, as the case may be, of overrun in contract time.

§ 630.306 Modification of original agreement.

(a) Form PR-2A (Appendix B) shall be used for all amendments to or modifications of the original project agreement. Ordinarily, such modification will be needed only to increase the amount of Federal funds to cover approved changes. At the final voucher stage where modification is necessary only to provide for normal overruns or underruns of previously estimated costs, no additional support is required. The final voucher will be sufficient for that purpose.

(b) If the modification is for the purpose of revising the estimated total cost of the project and the applicable Federal funds to cover changed conditions not provided for by change orders approved by the Division Engineer, the reasons therefor shall be set forth in the space headed "Other revisions."

Appendix A

TO BE COMPLETED BY FHWA MONTHLY TRANSACTION NO.	U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION FEDERAL-AID PROJECT AGREEMENT	STATE COUNTY PROJECT NO.
The State, through its Highway Agency, having complied, or hereby agreeing to comply, with the applicable terms and conditions set forth in (1) Title 23, U.S. Code, Highways, (2) the Regulations issued pursuant thereto and, (3) the policies and procedures promulgated by the Federal Highway Administrator relative to the above designated project, and the Federal Highway Administration having authorized certain work to proceed as evidenced by the date entered opposite the specific item of work, Federal funds are obligated for the project not to exceed the amount shown herein, the balance of the estimated total cost; being an obligation of the State. Such obligation of Federal funds extends only to project costs incurred by the State after the Federal Highway Administration authorization to proceed with the project involving such costs.		
PROJECT TERMINI		
PROJECT CLASSIFICATION OR PHASE OF WORK	EFFECTIVE DATE OF AUTHORIZATION	APPROXIMATE LENGTH (Miles)
HIGHWAY PLANNING AND RESEARCH (HP & R)		
PRELIMINARY ENGINEERING		
RIGHTS-OF-WAY		
CONSTRUCTION		
OTHER (Specify)		
FUNDS		
ESTIMATED TOTAL COST OF PROJECT	FEDERAL FUNDS	
\$	\$	
The State further stipulates that as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions set forth on the reverse hereof.		
_____ (Official name of Highway Agency) By _____ _____ (Title) By _____ _____ (Title) By _____ _____ (Title)		U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION By _____ (Division Engineer) Date executed by Division Engineer _____

Form PR-2 (Rev. 9-74) PREVIOUS EDITIONS ARE OBSOLETE

AGREEMENT PROVISIONS

1. *Responsibility for work.* a. Except for projects constructed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in compliance with the approved plans and specifications or project proposal which, by reference, are made a part hereof.

b. With regard to projects performed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in accordance with the terms of its approved Certification, or exceptions thereto as may have been approved by the Federal Highway Administration.

2. *Highway Planning and Research (HP&R) Project.* The State highway agency will (a) conduct or cause to be conducted, under its direct control, engineering and economic investigations of projects for future construction, together with highway research necessary in connection therewith, pursuant to the work program approved by the Federal Highway Administration and (b) prepare reports suitable for publication of the result of such investigations and research, but no report will be published without the prior approval of the Federal Highway Administration.

3. *Project for advance acquisition of rights-of-way.* In the event that actual construction of a road on this right-of-way is not undertaken by the close of the tenth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

4. *Preliminary engineering project for preparation of right-of-way plans or for preparation of construction plans, specifications and estimates.* In the event that right-of-way acquisition for, or actual construction of the road for which this preliminary engineering is undertaken is not started by the close of the fifth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

5. *Interstate system project.* (a) The State highway agency will not add or permit to be added, without the prior approval of the Federal Highway Administration any points of access to, or exit from, the project in addition to those approved in the plans and specifications for the project. (b) The State Highway agency will not permit automotive service stations, or other commercial establishments for serving motor vehicle users, to

be constructed or located on the right-of-way of the interstate system. (c) The State highway agency will not after June 30, 1968, permit the construction of any portion of the Interstate Route on which this project is located, including spurs and loops, as a toll road without the written concurrence of the Secretary of Transportation or his officially designated representative. The term "toll roads" does not include toll bridges or toll tunnels.

6. *Project for construction in advance of apportionment.* (a) This project authorized pursuant to 23 U.S.C. 115 as amended, will be subject to all procedures and requirements, and conform to the standards applicable to projects on the system on which located, financed with the aid of Federal funds. (b) No obligation of previously apportioned Federal funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway agency, and approval thereof by the Federal Highway Administration, any Federal-aid funds of the class designated by the project number prefix, apportioned to the State under 23 U.S.C. 104 subsequent to the date of this agreement, may be used to reimburse the State for the Federal share of the cost of work done on the project.

7. *Stage construction.* The State highway agency agrees that all stages of construction necessary to provide the initially planned complete facility, within the limits of his project, will conform to at least the minimum values set by approved AASHTO design standards applicable to this class of highways, even though such additional work is financed without Federal-aid participation.

8. *Bond issue project.* Construction, inspection and maintenance of the project will be accomplished in the same manner as for regular Federal-aid projects. No present or immediate obligation is created by this Agreement against Federal funds, its purpose and intent being to provide aid to the State, as authorized by 23 U.S.C. 122, for retiring maturities of the principal indebtedness of the bonds referred to below. When the State requests Federal reimbursement to aid in the retirement of such bonds, the request will be supported by the appropriate certification required by 23 CFR Part 140, Subpart F, and Volume 1, Chapter 4, Section 8 of the Federal-Aid Highway Program Manual or the alternative State procedure set forth in the State's Certificate, and payment of the authorized Federal share will be made from appropriate funds available. If in any year there is no unobligated balance of any apportioned Federal funds available from which payments hereunder may be made, there will be no obligation on the part of the Federal Government on account of bond maturities for that year. Funds available to the highway agency for this project are the proceeds of

bonds issued by the governmental unit indicated on the attached tabulation, pursuant to the authority and in the amounts by date of issue and beginning date of maturities set forth therein.

9. *Special highway planning and research project.* The State Highway agency hereby authorizes the Federal Highway Administration to charge the State's pro rata share of costs incurred against funds apportioned to the State under 23 U.S.C. 307(c), as amended. In the event a project is financed with both Federal-aid funds and State matching funds, the State agrees to advance to the Federal Highway Administration the State matching funds for its share of the estimated cost. For a National Pooled Fund study, the State hereby assigns its responsibility for the work to the Federal Highway Administration. For an Intra-Regional Cooperative Study, the State hereby assigns its responsibility for the work to the lead State for the study.

10. *Parking regulation and traffic control.* The State highway agency will not permit any changes to be made in the provisions for parking regulations and traffic control as contained in the agreement between the State and the local unit of Government referred to in the paragraph on "Additional Provisions," without the prior approval of the Federal Highway Administration, unless the State determines, and the Division Engineer concurs, that the local unit of Government has a functioning traffic engineering unit with the demonstrated ability to apply and maintain sound traffic operations and control.

11. *Signing and marking.* The State highway agency will not install, or permit to be installed, any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administrator pursuant to 23 U.S.C. 109(d) or the State's Certificate as applicable.

12. *Maintenance.* The State highway agency will maintain, or by formal agreement with appropriate officials of a county or municipal government cause to be maintained, the project covered by this agreement.

13. *Liquidated damages.* The State highway agency agrees that on Federal-aid highway construction projects not under Certification Acceptance the provisions of 23 CFR Part 630, Subpart C and Volume 6, Chapter 3, Section 1 of the Federal-Aid Highway Program Manual, as supplemented, relative to the basis of Federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

NONDISCRIMINATION PROVISION

14. The State highway agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction

work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:

"During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway agency setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations of advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The contractor will send to each labor union representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway agency advising the said labor union or workers' representative of the contractor's commitments under this section II-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regu-

lations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway agency or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The State highway agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The State highway agency also agrees:

(1) To assist and cooperate actively with the Federal Highway Administration and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor.

(2) To furnish the Federal Highway Administration and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Federal Highway Administration in the discharge of its primary responsibility for securing compliance.

(3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order.

(4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Federal Highway Administration or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

In addition, the State highway agency agrees that if it fails or refuses to comply with these undertakings, the Federal Highway Administration may take any or all of the following actions:

(a) Cancel, terminate, or suspend this agreement in whole or in part;

(b) Refrain from extending any further assistance to the State highway agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the State highway agency; and

(c) Refer the case to the Department of Justice for appropriate legal proceedings.

[39 FR 35348, Oct. 1, 1974, as amended at 40 FR 6491, Feb. 12, 1975]

ADDITIONAL PROVISIONS

Appendix B

TO BE COMPLETED BY FHWA	U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION	STATE
MONTHLY TRANSACTION NUMBER		
PROJECT REPORT NUMBER		COUNTY
MODIFICATION NUMBER		PROJECT NUMBER

MODIFICATION OF FEDERAL-AID
PROJECT AGREEMENT

The Project Agreement for the above-referenced project entered into between the undersigned parties and executed by the Division Engineer on: _____ 19 _____

is hereby modified as follows:

	Former amount	Revised amount
Estimated total cost of project	\$ _____	\$ _____
Federal funds	\$ _____	\$ _____
Other revision		

This modification is made for the following reasons:

All other terms and conditions of the Project Agreement will remain in full force and effect.

This modification is effective as of the _____ day of _____, 19 _____

(Official name of Highway Agency)

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____

By _____
(Division Engineer)

(Title)

By _____

(Title)

By _____

(Title)

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Appendix C

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION FEDERAL-AID PROJECT AGREEMENT (National Cooperative Highway Research Program)		1. STATE 2. PROJECT NUMBER								
SECTION I—AGREEMENT PROVISIONS										
In conformance with arrangements for financing the National Cooperative Highway Research Program, hereinafter referred to as the "NCHRP," pursuant to the Memorandum Agreement effective June 29, 1965, as amended, between the Federal Highway Administration, hereinafter referred to as "FHWA," the American Association of State Highway and Transportation Officials, hereinafter referred to as "AASHTO," and the National Academy of Sciences, hereinafter referred to as the "Academy"; the State formally consents to providing the funds stated in this agreement as its contribution towards financing expenditures incurred in conducting the NCHRP in accordance with the Memorandum Agreement. In accordance with the action taken by AASHTO requesting the Academy, through its Transportation Research Board to administer the NCHRP, the State authorizes FHWA to charge the State's pro rata share of the costs incurred against the funds stated in this agreement. It is understood that FHWA will make payments to the Academy for the State's share of the cost of the program pursuant to the State-Academy Agreement for the current fiscal year and the Fiscal Agreement entered into between the FHWA on July 1, 1962. In the event the State's contribution towards the cost of the NCHRP is to be financed with both Federal-aid funds and State-matching funds, the State agrees to advance the FHWA the State-matching funds for its share of the estimated cost.										
SECTION II—FUNDS										
3. ESTIMATED TOTAL COST OF PROJECT	4. FEDERAL FUNDS	5. EFFECTIVE DATE OF AUTHORIZATION								
SECTION III—AGREEMENT AND SIGNATURES										
The State, through its Highway Agency, and the Federal Highway Administration agree to the above provisions. <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; padding-top: 20px;"> _____ (Official Name of the Highway Agency) </td> <td style="width: 50%; vertical-align: top; padding-top: 20px;"> U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION </td> </tr> <tr> <td style="vertical-align: top; padding-top: 20px;"> BY _____ _____ (Title) </td> <td style="vertical-align: top; padding-top: 20px;"> BY _____ _____ (Title) </td> </tr> <tr> <td style="vertical-align: top; padding-top: 20px;"> BY _____ _____ (Title) </td> <td style="vertical-align: top; padding-top: 20px;"> _____ Date Executed </td> </tr> <tr> <td style="vertical-align: top; padding-top: 20px;"> BY _____ _____ (Title) </td> <td></td> </tr> </table>			_____ (Official Name of the Highway Agency)	U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION	BY _____ _____ (Title)	BY _____ _____ (Title)	BY _____ _____ (Title)	_____ Date Executed	BY _____ _____ (Title)	
_____ (Official Name of the Highway Agency)	U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION									
BY _____ _____ (Title)	BY _____ _____ (Title)									
BY _____ _____ (Title)	_____ Date Executed									
BY _____ _____ (Title)										

Form FH-21 (Previous editions are obsolete)
 Date 9-74

Subpart D—Geodetic Markers

SOURCE: 39 FR 26414, July 19, 1974, unless otherwise noted.

§ 630.401 Purpose.

The purpose of this subsection is to prescribe procedures for conducting geodetic control surveys when participation with Federal-aid highway funds in the cost thereof is proposed and to encourage inter-agency cooperation in setting station markers, surveying to measure their position, and preserving the control so established.

§ 630.402 Policy.

(a) Geodetic surveys along Federal-aid highway routes may be programmed as Federal-aid highway projects.

(b) All geodetic survey work performed as a Federal-aid highway project will conform to National Ocean Survey (NOS) specifications. NOS will, as the representative of FHWA, be responsible for the inspection and verification of the work to ascertain that the specifications for the work have been met. Final project acceptance by FHWA will be predicated on a finding of acceptability by NOS.

§ 630.403 Initiation of projects.

All projects shall be coordinated by the FHWA Division Engineer, the State highway department and the National Ocean Survey.

§ 630.404 Standards.

(a) Highway purposes may best be served by the establishment of station markings for horizontal control along Federal-aid highway routes at spacings of three to eight kilometers (about 2 to 5 miles) and station markers for vertical control of spacings no closer than one kilometer. These requirements may be waived only with the approval of the Administrator.

(b) Projects should be of sufficient scope to permit efficient use of field parties. Projects should extend at least 30 kilometers. Projects may be coordinated with adjoining States to attain greater efficiency.

(c) Where geodetic station markers cannot be established initially at points readily accessible from the Federal-aid route, or where unavoidable circum-

stances result in their being established within construction limits, supplemental projects may later be approved to set and survey markers at satisfactory permanent points, preferably within the right-of-way but at points where their use does not introduce traffic hazards.

Subpart E—Emergency Funds Procedures

SOURCE: 39 FR 36330, Oct. 9, 1974, unless otherwise noted.

§ 630.501 Purpose.

This part outlines the procedures to be followed in the administration of emergency funds for the restoration of roads and bridges damaged or destroyed by natural disasters or catastrophic failures, including relocation where necessary, and is intended to provide a contribution in aid to the States, their political subdivisions, or other organizations or agencies for relief from the unusually heavy expenses induced by extraordinary conditions.

§ 630.502 Definitions.

The following definitions shall apply as used in this part:

(a) *Catastrophic failure*—A sudden failure of a major element of the highway system from any cause, natural or otherwise, which results in disastrous impact on transportation service or has disastrous financial impact on the State or local political unit by virtue of the great cost of replacement of the failed element.

(b) *Federal roads*—Forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads regardless of whether such road or trail is on any Federal-aid highway system.

(c) *Natural disaster*—Occurrences, such as severe floods, hurricanes, severe storms, tidal waves, earthquakes, or landslides, occurring over a wide area and causing substantial damage to the highway, road, or trail system.

(d) *Official State proclamation*—Declaration by the Governor of the affected State recognizing the gravity of the situation and the resultant damage to Fed-

eral-aid systems highways and bridges. The proclamation must be issued during or shortly subsequent to the occurrence of a natural disaster or catastrophic failure and specify the area affected by a natural disaster to establish that the damage is not confined to a purely local area.

(e) *Agency or organization*—Any agency, organization, or person having jurisdiction over Federal roads not on any Federal-aid highway system.

§ 630.503 Emergency funds.

(a) 23 U.S.C. section 125 authorizes an emergency fund each fiscal year for the repair or reconstruction of highways, roads, and trails which the Federal Highway Administrator has determined to have suffered serious damage as the result of:

(1) A natural disaster over a wide area, or

(2) A catastrophic failure from any cause in any part of the United States.

(b) Any unused portion of the fiscal appropriation remains available for expenditure during the next two succeeding fiscal years.

§ 630.504 Requirements.

(a) All proposed repair or reconstruction work must be located on a Federal-aid highway system to qualify for emergency funds, except when such work is on Federal roads.

(b) When sections of Federal roads not on the Federal-aid system are damaged or destroyed, an application for emergency funds to assist in the cost of necessary repair or reconstruction may be made by the agency or organization having official jurisdiction over such roads or trails. Such notice or application shall be submitted, unless other arrangements have been made, to the FHWA.

(c) The State Highway Department (SHD) shall make application for emergency funds for damages to the Federal-aid highway system without undue delay.

(d) With the exception of damages to Federal roads, no emergency funds expenditures shall be made for damages to the Federal-aid system unless the Governor of such State has issued an official State proclamation pursuant to § 630.502 (d).

§ 630.505 Limitations.

(a) Extraordinary floods are natural disasters: Where flooding occurs with frequency or regularly or results in relatively minor damage, emergency funds shall not be granted. Storms of unusual intensity occur over small areas in most of the States each year. The necessary repair of roads or bridges resulting from such storms is not eligible for emergency funds.

(b) Serious damage to highways, roads, or trails resulting from a catastrophic failure shall not be eligible for emergency relief funds for replacement costs where the failure is caused by gradual and progressive deterioration or lack of proper maintenance.

(c) Diligent efforts shall be made to recover losses from the legally responsible parties where damages result from causes such as collisions with ships, barge tows, and highway vehicles, including vehicles with loads heavier than legally allowable loads for crediting to the project cost.

§ 630.506 Federal share payable.

(a) The Federal share payable for any repair or reconstruction of highways on the Federal-aid systems, including the Interstate System:

(1) Shall not exceed 70 percent of the cost thereof; provided, that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved), exclusive of national forests and national parks and monuments exceeding 5 percent of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is of its total area; or

(2) May be increased to 100 percent of the replacement cost of a comparable facility upon the request of the State when concurred in by the Federal Highway Administrator if the increased payment would be in the public interest.

(b) The Federal share payable for any repair or reconstruction of Federal roads may equal 100 percent of the cost regardless of whether such highways or roads are on any Federal-aid system.

§ 630.507 Eligibility of work.

(a) Emergency funds may participate in:

(1) Repairs to or reconstruction of damaged facilities of the highway within the right-of-way limits. Control features for stream channels outside the highway right-of-way shall not be eligible for emergency funds unless:

(i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section, and

(ii) The control features are necessary to preserve satisfactory operation of the highway system involved.

(2) Relocation or rebuilding, including costs of right-of-way, at higher elevations and the extension, replacement, or raising of any bridges affected where clearly economically justified to prevent future recurring damage under similar conditions.

(3) Temporary operations, including emergency repairs undertaken during or immediately following the occurrence for the purpose of:

(i) Reducing the extent of the damage;

(ii) Protecting remaining facilities; or

(iii) Restoring travel.

(4) Preliminary engineering. If performed by consultants prior approval of the contract by FHWA is required.

(b) Temporary operations and preliminary engineering as set forth in § 630.507(a)(3) and (4), respectively, may proceed without prior program approval and authorization provided the need for such is subsequently approved by the FHWA. This work must be included in a program to provide a basis for reimbursement.

(c) Permanent restoration work shall not be performed prior to program approval and authorization by the FHWA unless performed as part of an emergency repair project.

(d) Replacement highway facilities having more traffic lanes than the destroyed facility are limited in emergency relief reimbursement to a share of the cost of a new facility to current design standards of comparable traffic capacity to the destroyed facility.

§ 630.508 Submission of programs and allocation of funds.

(a) The FHWA concurrence in the official State proclamation and approval of the State's application is the basis for emergency funds allocations. After the allocation of emergency funds, the State highway department shall promptly submit a detailed program of projects individually justified and prepared in accordance with Federal-aid highway program procedures to the FHWA for approval.

(b) Authorization letters permitting the State to proceed with an approved program of projects shall establish the obligation of Federal funds.

§ 630.509 Processing of emergency projects.

(a) For projects located on a Federal-aid system, processing shall be by the State Highway Department in accordance with normal procedures for Federal-aid highway projects.

(b) For eligible projects not located on a Federal-aid system, the surveys and plans, specifications, and estimates (PS&E) shall be prepared by:

(1) The agency or organization having jurisdiction over such roads; or

(2) The FHWA and the appropriate agency or organization.

(c) Work shall be undertaken by the contract method where feasible. Requirements of advertising for bids may be waived if:

(1) Such procedure is authorized by State or local law, and

(2) Bids are solicited from a reasonable number of contractors or material supply companies.

The FHWA shall approve any such waiver.

§ 630.510 Expediting emergency projects.

After the approval of programs, all programs shall be constructed promptly as delay in the construction of an approved emergency project may result in withdrawal of the project from the approved emergency program.

Subpart F—Federal Participation in Cost of Disposal of Existing Highway Bridges

SOURCE: 39 FR 29173, Aug. 14, 1974, unless otherwise noted.

§ 630.601 Purpose.

To prescribe the policies and procedures governing the extent of Federal-aid participation in the cost of the disposal of existing highway bridges.

§ 630.602 Definitions.

(a) The term "Division Engineer" means the Chief Federal Highway Administration official assigned to conduct Federal Highway Administration business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) The term "contractor" means the highway construction contractor who is party to the highway contract.

§ 630.603 Policy.

When it is determined by a State highway department and approved by the Federal Highway Administration Division Engineer that a Federal-aid project is to include the disposal of an existing highway bridge, the manner of such disposal is to be set forth in the specifications and the bid schedule is to include one or more separate pay items for the related work. There may be Federal-aid participation in the costs of the separate pay item or items as outlined in §§ 630.604 or 630.605.

§ 630.604 Applications.

The policies and procedures prescribed herein apply to all Federal-aid highway projects except projects constructed pursuant to 23 U.S.C. 117.

[39 FR 29173, Aug. 14, 1974; 39 FR 33670, Sept. 19, 1974]

§ 630.605 Material assigned to contractor.

When the contractor is assigned the materials of an existing bridge and the responsibility for their disposal, there may be Federal-aid participation in the costs of the work as determined by the prices bid by the contractor.

§ 630.606 Material retained by State.

When the State highway department retains ownership of the materials of an existing bridge for either sale or future reuse, there may be Federal-aid participation in the costs of dismantling less the value of salvaged materials, to be determined as follows:

(a) The Division Engineer and the State shall agree as to the credit the State is willing to give the project as the value of the bridge material dismantled

at the site of the project. This agreement shall be reached before the project is advertised for bids.

(b) The invitation to bid shall include an item for dismantling the structure and setting aside for the State's use the material for which a value was determined as stated in paragraph (a) of this section.

Subpart G—Advance Construction of Federal-Aid Projects

SOURCE: 39 FR 26414, July 19, 1974, unless otherwise noted.

§ 630.701 Purpose.

The purpose of this directive is to prescribe procedures for the construction by a State of projects on any of the Federal-aid systems, in advance of apportionment of Federal-aid funds, or in lieu of apportioned funds for the Interstate System only, and for the subsequent reimbursement to the State of the Federal share of the cost of the project, pursuant to 23 U.S.C. 115 as amended.

[40 FR 12260, Mar. 18, 1975]

§ 630.702 Requirements and conditions.

(a) The State must have obligated all funds for any of the Federal-aid systems, other than the Interstate System, apportioned to it under 23 U.S.C. 104 of the particular class of funds for which the project is proposed.

(b) Any such project shall conform to the applicable standards adopted for roads on that system on which the project is located.

(c) The plans and specifications shall be approved prior to construction in the same manner as for other projects on the Federal-aid system involved.

(d) The prevailing wage rate provisions of 23 U.S.C. 113, as amended, shall apply.

(e) Advance construction projects are limited to the State's expected apportionment of Federal-aid funds authorized by the Congress but not yet apportioned to the States.

[39 FR 26414, July 19, 1974, as amended at 40 FR 12260, Mar. 18, 1975; 40 FR 17564, Apr. 21, 1975]

§ 630.703 Approval actions.

(a) Authorizations to proceed with preliminary engineering and the acquisition of rights-of-way shall be issued in the same manner as for regularly financed Federal-aid projects.

(b) Plans, specifications and estimates shall be submitted in the same manner and in the same detail as for regularly financed Federal-aid projects.

§ 630.704 Conversion to Federal-aid projects.

An advance construction project may be converted to a regularly financed Federal-aid project by approval of a State's written request for such action whenever sufficient apportioned Federal-aid funds of the particular class are available to cover the Federal pro rata share of the cost. Approval of the conversion action shall be at the level of delegated or re-delegated authority for approval of regular Federal-aid programs.

Subpart H—Bridges on Federal Dams

SOURCE: 39 FR 36474, Oct. 10, 1974, unless otherwise noted.

§ 630.801 Purpose.

The purpose of this subpart is to prescribe procedures for the construction and financing, by an agency of the Federal Government, of public highway bridges over dams constructed and owned by or for the United States.

§ 630.802 Applicability.

A proposed bridge over a dam, together with the approach roads to connect the bridge with existing public highways, must be eligible for inclusion in the Federal-aid highway system, if not already a part thereof.

§ 630.803 Procedures.

A State's application to qualify a project under this subpart will include:

(a) A certification that the bridge is economically desirable and needed as a link in the Federal-aid highway system.

(b) A statement showing the source and availability of funds to be used in construction of the roadway approaches.

(c) A statement of any obligation on the part of the agency constructing the dam to provide such bridge or approach roads to satisfy a legal liability incurred independently of this subpart.

PARTS 631—632 [RESERVED]

PART 633—REQUIRED CONTRACT PROVISIONS

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

Sec.

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633.103 Payrolls, weekly statements, and labor summaries.

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Appendix A—Required Contract Provisions, Federal-Aid Construction Contracts.

Appendix B—Federal-Aid proposal notices; Notices to Prospective Federal-Aid Construction Contractors.

Subpart B—Federal-Aid Contracts (Appalachian Contracts)

633.201 Purpose.

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633.204 Fiscal allocation and obligations.

633.205 Prefinancing.

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Appendix A—Types of contracts to which the Civil Rights Act of 1964 is applicable.

Appendix B—Required contract provisions, Appalachian Development Highway System and local access road construction contracts.

Appendix C—Additional required contract provisions, Appalachian Development Highway System and local access roads contracts other than construction contracts.

Appendix D—Federal-Aid proposal notices; Notices to prospective Federal-aid construction contractors.

Subpart C—Direct Federal Construction Contracts

633.301 Purpose.

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Appendix A Continuation of Standard Form 19—A Labor Standards Provisions

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b) (35).

SOURCE: 39 FR 20371, June 10, 1974, unless otherwise noted.

§ 633.101 Purpose.

The purpose of the regulations in this subpart is to prescribe, for Federal-aid

construction contracts, required contract provisions covering employment, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of contract, and the Clean Air Act, and to prescribe Federal-aid proposal notices relative to nonsegregated facilities and implementation of the Clean Air Act.

§ 633.102 Applicability.

Form PR-1273 "Required Contract Provisions, Federal-Aid Construction Contracts" (Appendix A) shall be made a part of, and incorporated in, each highway construction contract that involves the expenditure of Federal funds (other than direct Federal, Certification Acceptance, and Appalachian construction contracts).

§ 633.103 Payroll, weekly statements, and labor summaries.

For all projects, copies of payrolls and weekly statements with respect to the wages paid during the preceding weekly payroll period, filed with the State as set forth in the Required Contract Provisions for the project, are to be retained by the State highway department for the period set forth in Appendix A to 23 CFR Part 17 with respect to the particular project, for review as needed by the Federal Highway Administration, the Department of Labor, the General Accounting Office, or other agencies at any time during such period.

§ 633.104 Subletting or assigning the contract.

The subcontracting limitations set forth in 23 CFR 1.21(a) are included in Appendix A. Exceptions to such limitations to permit a greater percentage of work to be subcontracted may be authorized as provided in 23 CFR 1.21(b). The State may require a contractor to perform with his own organization a percentage of work greater than 50 percent if it so desires.

§ 633.105 Notices to prospective Federal-Aid construction contractors (Appendix B).

The State highway department shall include the notices concerning "Certification of Nonsegregated Facilities" and "Implementation of Clean Air Act", set forth in Appendix B, in all future bidding proposals for Federal-aid highway construction projects.

§ 633.106 Termination of contract.

All contracts exceeding \$2,500 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

§ 633.107 Implementation of the Clean Air Act.

Pursuant to regulations of the United States Environmental Protection Agency (40 CFR Part 15) implementing requirements with respect to the Clean Air Act are included in Appendix A.

APPENDIX A

REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS

(Exclusive of certification acceptance and Appalachian contracts)

- I. Application.
- II. Equal opportunity.
- III. Nonsegregated facilities.
- IV. Payment of predetermined minimum wages.
- V. Statements and payrolls.
- VI. Record of materials, supplies and labor.
- VII. Subletting or assigning the contract.
- VIII. Safety; accident prevention.
- IX. False statements concerning highway projects.
- X. Implementation of Clean Air Act.

I. APPLICATION

1. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piecework, station work or by subcontract.

2. The contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be grounds for termination of the contract.

4. A breach of the following clauses may also be grounds for debarment as provided in 29 CFR 5.6(b): Section I, paragraph 2; Section IV, paragraphs 1, 2, 3, 5 and 7; Section V, paragraphs 1, 5a, 5b, and 5d.

II. EQUAL OPPORTUNITY

1. *Selection of labor.* During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. *Employment practices.* During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selections for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors' commitments under this section II-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be deaccess to his books, records and accounts by tracts or Federally-assisted construction

contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. *Selection of subcontractors, procurement of materials, and leasing of equipment.* During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. *Compliance With Regulations:* The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. *Nondiscrimination:* The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment:* In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(1) withholding of payments to the contractor under the contract until the contractor complies, and/or

(2) cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions:** The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

III. NONSEGREGATED FACILITIES

(Applicable to Federal-aid construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, or material supplier, as appropriate, certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services

at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He agrees that (except where he has obtained identical certifications from proposed subcontractors or material suppliers for specific time periods), he will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGES

1. **General.** All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

2. Classification. a. The State highway department contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State highway department contracting officer to the Secretary of Labor.

b. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the State highway department contracting officer shall be referred to the Secretary for final determination.

3. Payment of fringe benefits. a. The State highway department contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

b. If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: *Provided, however*, the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Payment of excess wages. While the wage rates shown are the minimum rates required by the contract to be paid during its life, this is not a representation that labor can be obtained at these rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

5. Apprentices and trainees (programs of department of labor). a. Apprentices, under programs approved by the U.S. Department of Labor, will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program

registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph b. of this paragraph or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the State highway department contracting officer written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work. The term "apprentice" means (1) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or (2) a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training, or a State Apprenticeship Council (where appropriate) to be eligible for probationary employment as an apprentice.

b. Trainees: Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training.

6. Apprentices and trainees (programs of Department of Transportation). Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal-aid highway construction programs are not subject to the requirements of Section IV, paragraph 5 above. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.

7. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen or guards (including apprentices and trainees described in paragraphs 5 and 6 above) shall require or permit any laborer, mechanic, watchman or guard in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer, mechanic, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours

worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

8. *Violation: Liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph 7, the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. *Withholding for unpaid wages.* The State highway department contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers, mechanics, (including apprentices and trainees) watchmen, or guards employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer, mechanic, (including apprentices and trainees) watchman or guard employed or working on the site of the work, all or part of the wages required by the contract, the State highway department contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

10. *Withholding for liquidated damage.* The State highway department contracting officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in the clause set forth in paragraph 8.

V. STATEMENTS AND PAYROLLS

1. *Compliance with Copeland Regulations (29 CFR, Part 3).* The contractor shall comply with the Copeland Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.

2. *Weekly statement.* Each contractor or subcontractor shall furnish each week a statement to the State highway department resident engineer with respect to the wages paid each of its employees, (including apprentices and trainees described in Section IV, paragraphs 5 and 6, and watchmen and

guards) engaged on work covered by the Copeland Regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on U.S. Department of Labor Form WH-348, or the same certification appearing on the reverse of Optional U.S. Department of Labor Form WH-347, or on any form with identical wording.

3. *Final labor summary.* The contractor and each subcontractor shall furnish, upon the completion of the contract, a summary of all employment, indicating, for the completed project, the total hours worked and the total amount earned. This data shall be submitted to the State highway department resident engineer on Form PR-47 together with the data required in Section VI, hereof, relative to materials and supplies. The provisions of this paragraph are not applicable to contracts for secondary highways or contracts financed solely with funds provided by the Highway Beautification Act of 1965, as amended.

4. *Final certificate.* Upon completion of the contract, the contractor shall submit to the State highway department contracting officer, for transmission to the Federal Highway Administration with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen and guards employed on the project, in the following form:

* * * * *

The undersigned, contractor on

(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen and guards employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title-----

* * * * *

5. *Payrolls and payroll records.* a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers, mechanics, apprentices, trainees, watchmen and guards working at the site of the work.

b. The payroll records shall contain the name, social security number and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section :1(b) (2) of the Davis-

Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b) (2) (B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

c. The payrolls shall contain the following information:

(1) The employee's full name, address and social security number. The employee's full and social security number need only appear on the first payroll on which his name appears. The employee's address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of address necessitates a submittal to reflect the new address.)

(2) The employee's classification.

(3) Entries indicating the employee's basic hourly wage rate and, where applicable, the overtime hourly wage rate. The payroll should indicate separately the amounts of employee and employer contributions to fringe benefit funds and/or programs. Any fringe benefits paid to the employee in cash must be indicated. There is no prescribed or mandatory form for showing the above information on payrolls.

(4) The employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).

(5) The itemized deductions made and

(6) The net wages paid.

d. The contractor will submit weekly a copy of all payrolls to the State highway department resident engineer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classification set forth for each laborer or mechanic conform with the work he performed. Submission of a weekly statement which is required under this contract by Section V, paragraph 2, and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor pursuant to Section IV, paragraph 3b, shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for

inspection by authorized representatives of the State highway department, the Federal Highway Administration and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

e. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor shall make all necessary arrangements for them to be cashed and shall give information regarding such arrangements.

f. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.

g. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.

h. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall, directly or indirectly, require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

i. No charge shall be made for any transportation furnished by the contractor, or his agents, to any person employed on the work.

j. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

VI. RECORD OF MATERIALS, SUPPLIES AND LABOR

1. The provisions in this section are applicable to all contracts except contracts for secondary highways and contracts financed solely with funds provided by the Highway Beautification Act of 1965, as amended.

2. The contractor shall maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form PR-47 and in the units shown. Upon completion of the contract, this record, together with the final labor summary required in Section V, paragraph 3, hereof, shall be transmitted to the State highway department resident engineer for the project on Form PR-47 in accordance with instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and for structures over 20 feet long as measured along the centerline of the roadway.

3. The contractor shall become familiar with the list of specific materials and sup-

plies contained in Form PR-47 prior to the commencement of work under this contract. Any additional materials information required will be solicited through revisions of Form PR-47 with attendance explanations.

4. Where subcontractors are involved the contractor shall submit either a single report covering work both by himself and all his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any items designated by the State as "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.

a. "His own organization" shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owned or rented by him, with or without operators.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. In addition to the 50 percent requirement set forth in paragraph 2 above, the contractor shall furnish (a) a competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who performs the work), and (b) such other of his own organizational capability and responsibility (supervision, management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.

3. The contract amount upon which the 50 percent requirement set forth in paragraph 2 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

4. Any Items that have been selected as "Specialty Items" for the contract are listed as such in the Special Provisions, bid schedule, or elsewhere in the contract documents.

5. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the State highway department contracting officer, or his authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the

fulfillment of the contract. Request for permission to sublet, assign, or otherwise dispose of any portion of the contract shall be in writing and accompanied by (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the contractor that the labor standards provisions set forth in this contract shall apply to labor performed on all work encompassed by the request.

VIII. SAFETY; ACCIDENT PREVENTION

In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, or as the State highway department contracting officer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1923, formerly Part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to all personnel concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

Title 18, United States Code, Section 1020, reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

"Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

"Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

"Shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

X. IMPLEMENTATION OF CLEAN AIR ACT

1. The contractor stipulates that any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), Executive Order 11738, and regulations in implementation thereof (40 CFR, Part 15), is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR, 15.20.

2. The contractor agrees to comply with all the requirements of section 114 of the Clean Air Act, as amended, relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and all regulations and guidelines listed thereunder.

3. The contractor shall promptly notify the State highway department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. The contractor agrees to include or cause to be included the requirements of subparagraphs 1 through 4 of this paragraph X in every nonexempt subcontract, and further agrees to take such action as the Government may direct as a means of enforcing such requirements.

APPENDIX B

FEDERAL-AID PROPOSAL NOTICES

NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS

I. Certification of Nonsegregated Facilities

(a) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

(b) Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

(c) Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

"NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES"

"(a) A Certification of Nonsegregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

"(b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities

which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

"(c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause."

II. Implementation of Clean Air Act

(a) By signing this bid, the bidder will be deemed to have stipulated as follows:

(1) That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), Executive order 11738, and regulations in implementation thereof (40 CFR Part 15), is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

(2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

Subpart B—Federal-Aid Contracts (Appalachian Contracts)

AUTHORITY: 40 U.S.C. App. 201, 402; 23 U.S.C. 315; 49 CFR 1.48(b) (35).

SOURCE: 39 FR 35146, Sept. 30, 1974, unless otherwise noted.

§ 633.201 Purpose.

The purpose of the regulations in this subpart is to establish policies and outline procedures for administering projects and funds for the Appalachian Development Highway System and Appalachian local access roads.

§ 633.202 Definitions.

(a) The word "Commission" means the Appalachian Regional Commission (ARC) established by the Appalachian Regional Development Act of 1965, as amended (Act).

(b) The term "division engineer" means the chief Federal Highway Administration (FHWA) official assigned to

conduct FHWA business in a particular State.

(c) The term "Stage 2 project" means a project for which a State highway department has requested approval by FHWA, and reservation of available Federal-aid funds.

§ 633.203 Applicability of existing laws, regulations, and directives.

The provisions of Title 23, United States Code, that are applicable to the construction and maintenance of Federal-aid primary and secondary highways, and which the Secretary of Transportation determines are not inconsistent with the Act, shall apply, respectively, to the development highway system and the local access roads. In addition, the Regulations for the Administration of Federal-aid for Highways (Title 23, Code of Federal Regulations) and directives implementing applicable provisions of Title 23, United States Code, where not inconsistent with the Act, shall be applicable to such projects.

§ 633.204 Fiscal allocation and obligations.

(a) Federal assistance to any project under the Act shall be as determined by the Commission, but in no event shall such Federal assistance exceed 70 per centum of the cost of such a project.

(b) The division engineer's authorization to proceed with the proposed work under a stage 2 project shall establish obligation of Federal funds with regard to a particular project.

§ 633.205 Prefinancing.

(a) Under the provisions of subsection 201(h) of the Act, projects located on the Appalachian Development Highway System including preliminary engineering, right-of-way, and/or construction may be programed and advanced with interim State financing.

(b) Program approvals, plans, specifications, and estimates (PS&E) approval, authorizations to proceed, concurrence in award of contracts, and all other notifications to the State of advancement of a project shall include the statement, "There is no commitment or obligation on the part of the United States to provide funds for this highway improvement. However, this project is eligible for Federal reimbursement when sufficient funds are available from the amounts allocated by the Appalachian Regional Commission."

§ 633.206 Project agreements.

(a) Project agreements executed for projects under the Appalachian program shall contain the following paragraphs:

(1) "For projects constructed under section 201 of the Appalachian Regional Development Act of 1965, as amended, the State highway department agrees to comply with all applicable provisions of said Act, regulations issued thereunder, and policies and procedures promulgated by the Appalachian Regional Commission, and the Federal Highway Administration. Inasmuch as a primary objective of the Appalachian Regional Development Act of 1965 is to provide employment, the State highway department further agrees that in addition to the other applicable provisions of Title 49, Code of Federal Regulations, Part 21, § 21.5 (c) (1), and paragraphs (2) (iii) and (2) (v) of Appendix C thereof, shall be applicable to all employment practices in connection with this project, and to the State's employment practices with respect to those employees connected with the Appalachian Highway Program."

(2) "For projects constructed on a section of an Appalachian development route not already on the Federal-aid Primary System, the State highway department agrees to add the section to the Federal-aid Primary System prior to, or upon completion of, construction accomplished with Appalachian funds."

(b) For prefinanced projects, the following additional provision shall be incorporated into the project agreement:

(1) "Project for Construction on the Appalachian Development Highway System in Advance of the Appropriation of Funds. This project, to be constructed pursuant to subsection 201(h) of the Appalachian Regional Development Act Amendments of 1967, will be constructed in accordance with all procedures and requirements and standards applicable to projects on the Appalachian Development Highway System financed with the aid of Appalachian funds. No obligation of Appalachian funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway department, and approval thereof by the Federal Highway Administration, any Appalachian development highway funds made available to the State by the Appalachian Regional Commission subsequent to the date of this agreement may be used to reimburse the

State for the Federal share of the cost of work done on the project."

§ 633.207 Construction labor and materials.

(a) Construction and materials shall be in accordance with the State highway department standard construction specifications approved for use on Federal-aid primary projects and special provisions and supplemental specifications amendatory thereto approved for use on the specific projects.

(b) The provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d-2000d-4) and the implementing regulations in 49 CFR Part 21, including the provisions of § 21.5(c) (1), and paragraphs (2) (iii) and (2) (v) of Appendix C thereof relative to employment practices, shall be applicable to all types of contracts listed in Appendix A.

(c) The "Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts," Form PR-1316 (Appendix B), shall be included in all construction contracts awarded under the Act.

(d) The required contract provisions set forth in Form PR-1317 (Appendix C) shall be included in all types of contracts described in Appendix A, other than construction contracts.

(e) In the design and construction of highways and roads under the Act, the State may give special preference to the use of mineral resource materials native to the Appalachian region. The provisions of § 1.19 of this part shall not apply to projects under the Act to the extent such provisions are inconsistent with sections 201 (d) and (e) of the Act.

§ 633.208 Maintenance.

Maintenance of all highway projects constructed under the Act, whether on the development system or local access roads, shall be the responsibility of the State. The State may arrange for maintenance of such roads or portions thereof, by agreement with a local governmental unit.

§ 633.209 Notices to prospective Federal-aid construction contractors.

The State highway department shall include the notices set forth in Appendix D in all future bidding proposals for Appalachian Development System and Appalachian local access roads construction contracts.

§ 633.210 Termination of contract.

All contracts exceeding \$2,500 shall contain suitable provisions for termination by the State, including the manner in which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

§ 633.211 Implementation of Clean Air Act.

Pursuant to regulations of the United States Environmental Protection Agency (40 CFR, Part 15) implementing requirements with respect to the Clean Air Act are included in Appendix B.

APPENDIX A

TYPES OF CONTRACTS TO WHICH THE CIVIL RIGHTS ACT OF 1964 IS APPLICABLE

The Civil Rights Act of 1964 and the implementing regulations of the Department of Transportation (49 CFR, Part 21), including the provisions of § 21.5(c) (1), and subparagraphs (2)(iii) and (2)(v) of Appendix C thereof relative to employment practices, are applicable to the following types of contracts awarded by State highway departments, contractors, and first tier subcontractors, including those who supply materials and lease equipment:

1. Construction
2. Planning
3. Research
4. Highway Safety
5. Engineering
6. Property Management
7. Fee contracts and other commitments with persons for services incidental to the acquisition of right-of-way including, but not limited to:
 - a. Advertising contracts
 - b. Agreements for economic studies
 - c. Contracts for surveys and plats
 - d. Contracts for abstracts of title certificates and title insurance
 - e. Contracts for appraisal services and expert witness fees
 - f. Contracts to negotiate for the acquisition of right-of-way
 - g. Contracts for disposal of improvements and property management services
 - h. Contracts for employment of fee attorneys for right-of-way procurement, or preparation and trial of condemnation cases
 1. Contracts for escrow and closing services

APPENDIX B

REQUIRED CONTRACT PROVISIONS APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONSTRUCTION CONTRACTS

- I. Application.
- II. Employment preference.

III. Equal opportunity: employment practices.

IV. Equal opportunity: selection of subcontractors, procurement of materials, and leasing of equipment.

V. Nonsegregated facilities.

VI. Payment of predetermined minimum wages.

VII. Statements and payrolls.

VIII. Record of materials, supplies and labor.

IX. Subletting or assigning the contract.

X. Safety: accident prevention.

XI. False statements concerning highway projects.

XII. Implementation of Clean Air Act.

I. Application. 1. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piece-work, station work, or by subcontract.

2. Except as otherwise provided in sections II, III, and IV hereof, the contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be grounds for termination of the contract.

4. A breach of the following clauses may also be grounds for debarment as provided in 29 CFR 5.6(b) :

Section I, paragraph 2.

Section VI, paragraphs 1, 2, 3, 5 and 8a.

Section VII, paragraphs 1, 5a, 5b and 5d.

II. Employment preference. 1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the United States Department of Labor wherein the contract work is situated, or the sub-region, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees em-

ployed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of laborers, mechanics and other employees he anticipates will be required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill the positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Section II-1 through II-4 in every subcontract for work which is, or reasonably may be, done as on-site work.

III. Equal opportunity: employment practices. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department

setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractor's commitments under this section III and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section III in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, That in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation.

tion to protect the interests of the United States.

IV. Equal opportunity: selection of subcontractors, procurement of materials, and leasing of equipment. During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. *Compliance with regulations.* The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. *Nondiscrimination.* The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipments. The contractor shall not participate either directly or indirectly in the discrimination prohibited by § 21.5 of the Regulations, including employment practices.

3. *Solicitations for subcontracts including procurement of materials and equipment.* In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier, shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

4. *Information and reports.* The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Sanctions for noncompliance.* In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract, in whole or in part.

6. *Incorporation of provisions.* The contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement, as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier, as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

V. *Nonsegregated facilities.* (Applicable to Federal-aid construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, or material supplier, as appropriate, certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He agrees that (except where he has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods), he will obtain identical certifications from proposed subcontractors or material

suppliers prior to the award of subcontracts or the consummation of material supply agreements, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

VI. *Payment of predetermined minimum wages.*—1. *General.* All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on be half of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of section VI, paragraph 8b, hereof. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

2. *Classifications.* a. The State highway department contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State highway department contracting officer to the Secretary of Labor.

b. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the State highway department contracting officer shall be referred to the Secretary for final determination.

3. *Payment of fringe benefits.* a. The State highway department contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by

the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

b. If the contractor does not make payments to a trustee or other third person, he may consider as part of the wage of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is part of this contract: Provided, however, the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. *Payment of excess wages.* While the wage rates shown are the minimum rates required by the contract to be paid during its life, this is not a representation that labor can be obtained at these rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

5. *Apprentices and trainees (programs of Department of Labor).* a. Apprentices, under programs approved by the U.S. Department of Labor, will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph b. of this paragraph or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the State highway department contracting officer written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work. The term "apprentice" means (1) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or (2) a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of

Apprenticeship and Training, or a State Apprenticeship Council (where appropriate) to be eligible for probationary employment as an apprentice.

b. *Trainees.* Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training.

6. *Apprentices and trainees (programs of Department of Transportation).* Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation is promoting equal opportunity in connection with Federal-aid highway construction programs are not subject to the requirements of Section VI, paragraph 5 above. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.

7. *Withholding for unpaid wages.* The State highway department contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers (mechanics, (including apprentices and trainees) watchmen, or guards employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer, mechanic, (including apprentices and trainees) watchman or guard employed or working on the site of the work, all or part of the wages required by the contract, the State highway department contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

8. *Overtime requirements.* a. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen or guards (including apprentices and trainees described in paragraphs 5 and 6 above) shall require or permit any laborer, mechanic, watchman or guard in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer, mechanic, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

b. In the event of any violation of paragraph 8a, the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of paragraph 8a,

in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph 8a.

c. The State highway department contracting officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in paragraph 8b.

VII. *Statements and payrolls.*—1. *Compliance with Copeland regulations (29 CFR, Part 3):* The contractor shall comply with the Copeland Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.

2. *Weekly statement.* Each contractor or subcontractor shall furnish each week a statement to the State highway department resident engineer with respect to the wages paid each of its employees, including apprentices and trainees described in section VI, paragraphs 5 and 6, and watchmen and guards on work covered by the Copeland regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on U.S. Department of Labor Form WH-348, or the same certification appearing on the reverse of Optional U.S. Department of Labor Form WH-347, or on any form with identical wording.

3. *Final Labor summary.* The contractor and each subcontractor shall furnish, upon the completion of the contract, a summary of all employment, indicating for the completed project the total hours worked and the total amount earned. This data shall be submitted to the State highway department resident engineer on Form PR-47 together with the data required in section VIII, hereof, relative to materials and supplies.

4. *Final certificate.* Upon completion of the contract, the contractor shall submit to the State highway department contracting officer, for transmission to the Federal Highway Administration with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen and guards employed on the project, in the following form:

The undersigned, contractor on

(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen and guards employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract pro-

visions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title.....

• • •

5. *Payrolls and payroll records.* a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers, mechanics, apprentices, trainees, watchmen and guards working at the site of the work.

b. The payroll records shall contain the name, social security number and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor, pursuant to section VI, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated of the actual cost incurred in providing such benefits.

c. The payrolls shall contain the following information:

1. The employee's full name, address and social security number and a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in section II, paragraph 1a. (The employee's full name and social security number need only appear on the first payroll on which his name appears. The employee's address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of address necessitates a submittal to reflect the new address.)

2. The employee's classification.

3. Entries indicating the employee's basic hourly wage rate and, where applicable, the overtime hourly wage rate. The payroll should indicate separately the amounts of employee and employer contributions to fringe benefit funds and/or programs. Any fringe benefits paid to the employee in cash must be indicated. There is no prescribed or mandatory form for showing the above information on payrolls.

4. The employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).

5. The itemized deductions made and

6. The net wages paid.

d. The contractor will submit weekly a copy of all payrolls to the State highway department resident engineer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of a weekly statement which is required under this contract by section VII, paragraph 2, and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor pursuant to section VI, paragraph 3b, shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all sub-contractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the State highway department, the Federal Highway Administration and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

e. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor shall make all necessary arrangements for them to be cashed and shall give information regarding such arrangements.

f. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.

g. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.

h. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall, directly or indirectly, require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

i. No charge shall be made for any transportation furnished by the contractor, or his agents, to any person employed on the work.

j. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

VIII. *Record of materials, supplies, and labor.* 1. The contractor shall maintain a record of the total cost of all materials and

supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form PR-47 and in the units shown. Upon completion of the contract, this record, together with the final labor summary required in section VII, paragraph 3, hereof, shall be transmitted to the State highway department resident engineer for the project on Form PR-47 in accordance with instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and for structures over 20 feet long as measured along the centerline of the roadway.

The contractor shall become familiar with the list of specific materials and supplies contained in Form PR-47 prior to the commencement of work under this contract. Any additional materials information required will be solicited through revisions of Form PR-47 with attendant explanations.

3. Where subcontracts are involved the contractor shall submit either a single report covering work both by himself and all his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.

IX. *Subletting or assigning the contract.*
1. The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any items designated by the State as "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.

a. "His own organization" shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owned or rented by him, with or without operators.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. In addition to the 50 percent requirements set forth in paragraph 1 above, the contractor shall furnish (a) a competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who performs the work), and (b) such other of his own organizational capability and responsibility (supervision, management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.

3. The contract amount upon which the 50 percent requirement set forth in para-

graph 1 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

4. Any items that have been selected as "Specialty Items" for the contract are listed as such in the Special Provisions, bid schedule, or elsewhere in the contract documents.

5. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the State highway department contracting officer, or his authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Request for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the contractor that the labor standards provisions set forth in this contract shall apply to labor performed on all work encompassed by the request.

X. *Safety; accident prevention.* In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, or as the State highway department contracting officer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, formerly Part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

XI. *False statements concerning highway projects.* In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to

any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to all personnel concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON
FEDERAL-AID HIGHWAY PROJECTS**

Title 18, United States Code, Section 1020, reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

"Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

"Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

"Shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

XII. Implementation of Clean Air Act. 1. The contractor stipulates that any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), Executive Order 11738, and regulations in implementation thereof (40 CFR, Part 15), is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR, 15.20.

2. The contractor agrees to comply with all the requirements of section 114 of the Clean Air Act, as amended, relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and all regulations and guidelines listed thereunder.

3. The contractor shall promptly notify the State highway department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating

that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. The contractor agrees to include or cause to be included the requirements of subparagraphs 1 through 4 of this paragraph XII in every nonexempt subcontract, and further agrees to take such action as the Government may direct as a means of enforcing such requirements.

APPENDIX C

**ADDITIONAL REQUIRED CONTRACT PROVISIONS, AP-
PALACHIAN DEVELOPMENT HIGHWAY SYSTEM
AND LOCAL ACCESS ROADS CONTRACTS OTHER
THAN CONSTRUCTION CONTRACTS**

Equal Opportunity: Employment Practices and Selection of Subcontractors, Suppliers of Materials, and Lessors of Equipment

During the performance of this contract, the contractor agrees as follows:

1. *Compliance with regulations:* The contractor will comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the regulations), which are herein incorporated by reference and made a part of this contract.

2. *Employment practices:* a. The contractor will not discriminate against any employee or applicant for employment because of race, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, or national origin. Such action shall include, but not be limited to the following: recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities and treatment of employees. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this employment practices clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers representative of the contractor's commitments under this employment practices provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3. *Selection of subcontractors, procurement of materials and leasing of equipment:* a. The contractor, with regard to the work performed

by him after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by § 21.5 of the Regulations.

b. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the contractor of the contractor's obligations under this contract and the regulations relative to nondiscrimination on the ground of race, color, or national origin.

4. *Information and reports:* The contractor will provide all information and reports required by the regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Incorporation of provisions:* The contractor will include these additional required contract provisions in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or orders, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract procurement, or lease as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor, supplier, or lessor as a result of such directed action, the contractor may request the State to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

6. *Sanctions for noncompliance:* In the event of the contractor's noncompliance with sections 1 through 5 above, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to.

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract in whole or in part.

APPENDIX D

FEDERAL-AID PROPOSAL NOTICES

Notices to Prospective Federal-Aid Construction Contractors

I. *Certification of nonsegregated facilities.*

(a) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7439), May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

(b) Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

(c) Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

(a) A Certification of Nonsegregated Facilities is required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7431, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

(b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This

certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

(c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

II. Implementation of Clean Air Act. (a) By signing this bid, the bidder will be deemed to have stipulated as follows:

(1) That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as by Pub. L. 91-604), Executive order 11738, and regulations in implementation thereof (40 CFR, Part 15), is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

(2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

Subpart C—Direct Federal Construction Contracts

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b) (36).

SOURCE: 89 FR 22418, June 24, 1974, unless otherwise noted.

§ 633.301 Purpose.

To prescribe for direct Federal highway construction contracts, provisions covering employment, safety, specific equal employment opportunity responsibilities and false statements concerning highway projects.

§ 633.302 Applicability.

(a) The form "Continuation of Standard Form 19-A, Labor Standards Provisions" (Appendix A) shall be made a part of all highway construction contracts under the direct supervision of the Federal Highway Administration. The form shall be incorporated in each highway construction contract as a continuation of Standard Form 19-A, Labor

Standards Provisions and the clauses set forth in paragraph 7 of Appendix A shall be included in all subcontracts.

(b) Such additional labor standards provisions as hometown or imposed equal employment opportunity plans shall be added at the end of the form.

APPENDIX A

CONTINUATION OF STANDARD FORM 19-A LABOR STANDARDS PROVISIONS

(DOT/FHWA 3-74)

1. Weekly statement

The contractor and each subcontractor shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by the Copeland Act Regulations, 29 CFR, Part 3, and by 29 CFR, Part 5, during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. The statement shall be on U.S. Department of Labor Form WH 348, "Statement of Compliance," or on an identical form on the back of U.S. Department of Labor Form WH 347, "Payroll (For Contractor's Optional Use)," or on any form with identical wording. Copies of these forms may be purchased from the Government Printing Office.

2. Employment practices

a. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by a negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor and each subcontractor shall make all necessary arrangements for them to be cashed and shall give information to their employees regarding such arrangements.

b. No fee of any kind shall be asked or accepted by the contractor, or any of his agents or subcontractors, from any person as a condition of employment on the project.

c. No laborers or mechanics shall be charged for any tools used in performing their duties unless prior permission to make payroll deductions for such charges has been granted by the Secretary of Labor in accordance with Section 3.6 of the Copeland Act Regulations.

d. Every employee on the work covered by this contract shall be permitted to lodge, board, and trade where and with whom he elects and neither the contractor, his subcontractors, nor his employees shall directly or indirectly require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

e. No charge shall be made for any transportation furnished by the contractor, or his

subcontractors to any person employed on the work.

f. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

g. Each employee's social security number must be shown on the first payroll on which his name appears.

3. Payment of excess wages

While the wage rates shown in the wage determination decision are the minimum hourly rates required by the contract to be paid during its life, it is the responsibility of bidders to inform themselves as to the local labor conditions, such as the length of workday and workweek, overtime compensation, health and welfare contributions, labor supply, and prospective changes or adjustment of wage rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

4. Safety

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any individual employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, as revised from time to time) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act.

5. False statements concerning highway projects

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the contractor shall post the Notice, Form PR-1022 on each Federal highway project in one or more places where it is readily available to all personnel concerned with the project.

6. Specific equal employment opportunity requirements

a. General

(1) Equal employment opportunity requirements not to discriminate and to take

affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in SF 23-A, General Provisions and in these Provisions. The requirements set forth in these Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the General Provisions.

(2) The contractor will work with the Federal Government in carrying out equal employment opportunity obligations and in their review of his activities under the contract.

(3) The prime contractor, and all subcontractors (not including material suppliers), holding subcontracts of \$10,000 or more, will comply with the minimum equal employment opportunity requirements set forth in the balance of this clause 6.

b. Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

c. Equal Employment Opportunity Officer

The contractor will designate and make known to the contracting officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

d. Dissemination of Policy

(1) All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities. To insure that the above agreement will be met, the following actions will be taken as a minimum:

(a) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which

time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(b) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(c) The EEO Officer or appropriate company official will instruct all employees engaged in the direct recruitment of employees for the project relative to the methods followed by the contractor in locating and hiring minority group employees.

(2) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officer, etc., the contractor will take the following actions:

(a) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(b) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

e. Recruitment

(1) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." He will insert all such advertisements in newspapers, or other publications, having a large circulation among minority groups in the area from which the project work force would normally be derived.

(2) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

(3) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

f. Personnel Actions

(1) Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

(a) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

(c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The contractor will investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation the contractor will inform every complainant of all of his avenues of appeal.

g. Training and Promotion

(1) The contractor will assist in locating, qualifying and increasing the skills of minority group employees and applicants, for employment.

(2) Consistent with his manpower requirements and as permissible under Federal and State regulations, the contractor will make full use of training programs, i.e., preapprenticeship apprenticeship, and/or on-the-job training programs for the geographical area of contract performance.

(3) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

(4) The contractor will periodically review the training and promotion potential of minority group employees and will encourage eligible employees to apply for such training and promotion.

h. Unions. If the contractor relies in whole or in part upon unions as a source of his work force, he will use his best efforts to obtain the cooperation of such unions to increase minority group opportunities within the unions, and to effect referrals by such unions of minority group employees. Actions by the contractor, either directly or through a contractor's association acting as his agent, will include the procedures set forth below:

(1) Use his best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members for membership in the unions and increasing the skills of minority group employees so that they may qualify for higher paying employment.

(2) Use his best efforts to incorporate an equal employment opportunity clause into all union agreements to the end that such unions will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

(3) In the event a union is unable to refer applicants as requested by the contractor within the time limit set forth in the union agreement, the contractor will, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified minority group persons.

1. Subcontracting

(1) The contractor will use his best efforts to utilize minority group subcontractors or subcontractors with meaningful minority group representation among their employees.

(2) The contractor will use his best efforts to assure subcontractor compliance with their equal employment opportunity obligations.

j. Records and Reports

(1) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(a) The number of minority and non-minority group members employed in each work classification on the project.

(b) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to contractors who rely in whole or in part on unions, as a source of their work force).

(c) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority group employees.

(d) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group representation among their employees.

(2) All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by the contracting officer or his authorized representative.

(3) The contractor will submit to the Federal Highway Administration a monthly report for the first three months after construction begins, and thereafter upon request, for the duration of the project, indicating the number of minority and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR-1391.

7. Subcontracts

The contractor shall include, verbatim, clauses 1, 2, 4, 5 and 6 of this continuation sheet in each of his subcontracts, except that Clause 6 will not be required for subcontracts less than \$10,000. In addition, the contractor shall include a clause requiring each subcontractor to include these clauses in any lower tier subcontracts.

PART 634 [RESERVED]

PART 635—CONSTRUCTION AND MAINTENANCE

Subpart A—Contract Procedures

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Appendix A—Summary of Acceptable Criteria for Specifying Types of Culvert Pipes.

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Subpart C—Physical Construction Authorization

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635.303	Physical construction.
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AUTHORITY: 23 U.S.C. 112, 113, 114, 117, 126 and 315; 42 U.S.C. 3834, 4231-4233, 4601 et seq.; 49 CFR 1.48(b).

Subpart A—Contract Procedures

SOURCE: 39 FR 35152, Sept. 30, 1974, unless otherwise noted.

§ 635.101 Purpose.

The purpose of this subpart is to prescribe policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the Federal Highway Administration (FHWA).

§ 635.102 Definitions.

As used in this subpart:

(a) "Administrator" means Federal Highway Administrator.

(b) "Division Engineer" means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.

(c) "State highway agency" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.

(d) "Certification Acceptance" means the alternative procedure which may be used for administering certain highway projects involving Federal funds pursuant to 23 U.S.C. 117.

(e) "Minority Contractor" means a minority business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include but are not limited to Negroes, Puerto Ricans, Spanish speaking Americans, American Indians, Eskimos, Orientals, and Aleuts.

§ 635.103 Applicability.

The policies, requirements, and procedures, prescribed in this subpart, subject to certain modifications as provided in § 635.5(e), apply to all Federal-aid highway projects except those constructed under a Certification Acceptance Plan to which only §§ 635.7(e), 635.8(c) and 635.13(h) shall apply.

§ 635.104 Method of construction.

(a) Except as provided in paragraph (b) of this section, or when the division engineer finds that because of unusual circumstances some other method is in the public interest, actual construction

work shall be performed by contract awarded to the lowest responsible bidder. The State highway agency shall assure opportunity for free, open and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with the procedures and requirements set forth in § 635.7.

(b) When the division engineer finds that it is in the public interest, construction work may be performed by some other method than by contract awarded by competitive bidding pursuant to requirements and procedures prescribed by him. Before such finding is made, the State highway agency shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and economically. Approval by the division engineer for construction by a method other than competitive bidding shall be requested by the State in accordance with Subpart B.

§ 635.105 Supervising agency.

(a) The State highway agency has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by or under the supervision of a county, city, or other local public agency. The State highway agency will be responsible for insuring that such projects receive the same degree of supervision and inspection as a project constructed under a contract let and directly supervised by that agency and that the project is completed in conformity with approved plans and specifications.

(b) When a project is not located on a highway system over which the State highway agency has legal jurisdiction, or when other special conditions warrant, the State highway agency may arrange for a local public agency having jurisdiction over such streets or highways to perform the work with its own forces, or to let a contract therefor, provided the division engineer approves such proposed arrangements in advance and provided all the following conditions are met:

(1) There is an agreement between the State highway agency and the local public agency setting forth the conditions under which the project will be constructed. The agreement shall provide that construction work performed by or under the supervision of a local public agency will be subject to inspection at

all times by the State highway agency and the FHWA.

(2) The State highway agency certifies that the work can be more advantageously performed by the local public agency.

(3) The local public agency is paying part of the cost of the work or has other special interest therein.

(4) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work.

(5) In the case of force account work, there is full compliance with Subpart B of this Part.

(c) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(d) Although the State highway agency may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the State highway agency shall provide a full-time State-employed engineer to be in responsible charge and direct control of the project at all times. In those instances where a city or county can justify the use of consultants for these services, the city or county shall have a similar duty. The State highway agency and any such city or county shall not be relieved of its responsibilities under Federal law and the regulations in the event it utilizes the services of an engineering organization.

(e) When construction operations are performed on Federal-aid highway projects by any Federal agency by Federal contract and under such agency's procedures and operations on behalf of a State highway agency or other public agency, such construction operations shall be performed under the direct supervision of the State highway agency except that such supervision may be exercised through the contracting Federal agency where it is so provided by agreement between the State highway agency and the Federal agency. The right of inspection of the work under these contracts shall be extended to all agencies involved in the project.

§ 635.106 Small business participation.

The State highway agency shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with

Title VI of the Civil Rights Act of 1964 and Executive Order 11625, the State highway agency shall affirmatively encourage minority business participation in the highway construction program.

§ 635.107 Advertising for bids.

(a) No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for bids, prior to authorization thereof by the division engineer.

(b) An invitation for bids shall not be issued by the State highway agency until the provisions of the applicable FHWA regulations and directives covering the administration of the Highway Relocation Assistance Program have been met, and there exists an understanding that satisfactory traffic control devices will be installed prior to acceptance of the project. The advertising shall be done in accordance with the laws, specifications, regulations, and policies of the State in which the project is located and the applicable Federal requirements set forth in this subpart and those implementing Title VI of the Civil Rights Act of 1964, under conditions that will assure free and adequate competition.

(c) The advertisement must be available to bidders a minimum of 3 weeks prior to opening of bids except that shorter periods may be approved by the division engineer in special cases when justified.

(d) The State highway agency shall obtain the approval of the division engineer prior to issuing any addendums to the approved plans and specifications during the advertising period. The State highway agency shall provide such assurance as may be required by the division engineer that all bidders have received any such addendums.

(e) Bidding procedures on a nondiscriminatory basis shall be afforded to all qualified bidders regardless of State boundaries and without regard to race, color, sex, or national origin. If any provisions of State laws, specifications, regulations, or policies may operate in any manner contrary to Federal requirements, including Title VI of the Civil Rights Act of 1964, to prevent submission of a bid, or prohibit consideration of a bid submitted by any responsible contractor appropriately qualified in accordance with § 635.8, such provisions shall not be applicable to Federal-aid projects. Where such nonapplicable provisions exist, notices of advertising, spec-

ifications, special provisions or other governing documents shall include a positive statement to advise prospective bidders of those provisions that are not applicable.

(f) No procedure or requirement shall be imposed by any State in connection with any project which operates to restrict competitive bidding by discriminating against the purchase of a surety bond or insurance policy from any surety or insurer outside the State and authorized to do business in the State.

(g) No public agency shall be permitted to bid in competition, or to enter into subcontracts, with private contractors.

(h) In the event that §§ 635.305(c) (1) and (2), have not been complied with prior to advertisement, the advertised specifications shall include:

(1) A statement that the contractor will not be allowed to proceed with the physical construction of any part of the project until all residentially improved properties have been vacated and specific dates for termination of operation of businesses have been established for proper coordination with the physical construction schedule. The statement shall indicate that physical construction is not to be interpreted to include clearance of rights-of-way of residential improvements which have been permanently vacated;

(2) A statement concerning any acquired or unacquired parcels of right-of-way for which the lack of right of occupancy and use can be expected to interfere with construction operations;

(3) An estimate of the length of time such interferences can be expected to continue; and

(4) A statement that extensions of time will be granted, if necessary, for delays caused by interferences beyond such estimate period.

(i) (1) The State highway agency shall include a statement substantially as follows in the advertised specifications:

Title 23, United States Code, section 112 (c), requires, as a condition precedent to approval by the Federal Highway Administrator of the contract for this work, that there be filed a sworn statement executed by, or on behalf of the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract. This sworn statement

shall be in the form of an affidavit executed and sworn to by the successful bidder before a person who is authorized by the laws of this State to administer oaths. The original of such sworn statement shall be filed with the State highway agency prior to the award of the contract.

(2) As a prerequisite to the division engineer's formal concurrence in the award of the construction contract, the State highway agency must submit a copy of the required statement to the division engineer, or advise the division engineer, in writing that the required statement has been received and is on file with the State highway agency.

§ 635.108 Licensing and qualification of contractors.

(a) No procedure or requirement for prequalification, qualification or licensing of contractors shall be approved which, in the judgment of the Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed. No contractor shall be required by law, regulation or practice to obtain a license before he may submit a bid or before his bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

(b) The procedures and requirements a State highway agency proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the division engineer for advance approval. Only those procedures and requirements so approved shall be

effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the division engineer.

(c) For purposes of evaluating compliance with the requirements of Title VI of the Civil Rights Act of 1964 in these areas, the State highway agency shall establish procedures and maintain records that will identify contractors and subcontractors with regard to minority or nonminority classification within 90 days after the effective date of this subsection.

§ 635.109 Bid opening and bid tabulations.

All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. The State highway agency shall prepare and forward tabulations of bids to the division engineer. These tabulations shall be certified by a responsible State highway agency official and shall show (a) item details for at least the low three acceptable bids and (b) the total amounts of all other acceptable bids.

§ 635.110 Tied bids.

(a) Two or more Federal-aid projects may be tied together for bidding purposes where it appears that by so doing more favorable bids may be received. To avoid discrimination against contractors desiring to bid upon a lesser amount of work than that included in the tied combinations, provisions should be made to permit bidding separately on the individual projects whenever they are of such character as to be suitable for bidding independently.

(b) Federal-aid projects and State-financed projects may be combined in one contract where the conditions and size of the projects are so similar that the unit costs on the Federal-aid projects will not be increased by such combination of projects. In such cases, like quantities should be combined in the proposal to avoid the possibility of unbalancing of bids in favor of either of the projects in the combination.

(c) The State highway agency may tie or allow to be tied, proposals for a Federal-aid project and a State-financed

project where conditions are other than as outlined in § 635.10(b). The bid schedule shall set forth the quantities separately for the Federal-aid work and the State-financed work. All proposals submitted for the tied projects must contain separate bid prices for each project individually. Federal participation in the cost of the work will be on the basis of the unit prices presented in the proposal by the individual contractor who would be the lowest responsible bidder if only the Federal-aid project were considered.

§ 635.111 Award of contract and concurrence in award.

(a) The State highway agency shall formally request concurrence by the division engineer in the award of all Federal-aid contracts. Concurrence in award by the division engineer is a necessary prerequisite to Federal participation in the construction costs. His concurrence shall be considered as authority to proceed with construction, unless specifically stated otherwise.

(b) Contracts shall be awarded within the time established by the State highway agency to the lowest responsible bidder subject to the concurrence of the division engineer.

(c) If the State highway agency determines that the lowest bidder is not qualified, it shall so notify the division engineer and obtain his concurrence before making an award to the next lowest responsible bidder if such bid is otherwise acceptable.

(d) If the State highway agency proposes to reject or decline to read or consider an otherwise low bid on the ground that it is irregular because of noncompliance with a bidding requirement, it shall submit justification for not waiving such requirements unless the noncompliance involves one of the following items:

(1) Failure to sign the bid.

(2) Failure to furnish required amount of guarantee.

(3) Failure to include a unit price for each item in the bid schedule.

(4) Failure to include a total amount for the bid.

(5) Bid is not typed or in ink.

(6) Bid contains conditions or qualifications not provided for in the specifications.

(7) Bidder is not prequalified although approved prequalification procedures are in effect.

If such justification is not considered by the division engineer to be sufficient,

concurrence will not be given to an award to another bidder on the contract at the same letting.

(e) Any proposal by the State highway agency to reject all bids received for a Federal-aid project shall be submitted to the division engineer for concurrence, accompanied by adequate justification.

§ 635.112 Agreement estimate.

(a) Following the award of contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the State highway agency and submitted to the division engineer as soon as practicable for use in the preparation of the project agreement. The agreement estimates shall include the actual or best estimated costs of any other items to be included in the project agreement.

(b) An agreement estimate shall be submitted by the State highway agency for each force account project when the plans and specifications are submitted to the division engineer for approval. It shall normally be based on the estimated quantities and the unit prices agreed upon in advance between the State highway agency and the division engineer, whether the work is to be done by the State highway agency or by a county or other political subdivision. Such agreed unit prices shall constitute a firm commitment as the basis for Federal participation in the cost of the project. The unit prices shall be based upon the estimated actual cost of performing the work but shall in no case exceed unit prices currently being obtained by competitive bidding on comparable highway construction work in the same general locality. In special cases involving unusual circumstances, the estimate may be based upon the estimated costs for labor, materials, equipment rentals, supplies and supervision to complete the work rather than upon agreed unit prices. This subsection shall not be applicable to agreement estimates for railroad and utility force account work.

§ 635.113 Subcontracting.

(a) The following terms as used in this section are defined as follows:

(1) "His own organization" shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owned or rented by him, with or without operators. Such term does not include employees or

equipment of a subcontractor, assignee, or agent of the prime contractor.

(2) "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract. However, the fabrication and erection of certain types of steel structures are of such a nature and intricacy that they should be considered "Specialty Items," even though the cost of this work may constitute the major portion of the contract amount.

(b) Contracts for projects shall require that the contractor perform with his own organization contract work amounting to not less than 50 percent of the total contract price. For purposes of this paragraph an assignment of contract work is considered synonymous with a subcontract to perform such work.

(c) To assure that any subcontracted work is performed in accordance with the contract requirements, the contractor shall be required to furnish:

(1) A competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who performs the work), and

(2) Such other of his organizational capability and responsibility (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

(d) Upon the request of a State highway agency the requirements of this paragraph may be modified by the Administrator for a project prior to or after the award of a contract, to such extent as he may determine to be in the public interest.

(e) The cost of "Specialty Items" may be deducted from the total contract price before computing the amount of work required to be performed by the contractor with his own organization. Specialty items may be designated in the advertised specifications and may be performed by subcontract.

(f) To determine whether the contractor is in compliance with the requirement that he perform with his own organization contract work amounting to not less than 50 percent of the total original

contract price, the following criteria shall apply:

(1) The contract amount upon which the 50 percent requirement is computed shall include the cost of materials and manufactured products which are to be purchased or produced under the contract provisions.

(2) The percentage of subcontracted work shall be based on the contract, rather than subcontract unit prices. If only a part of a contract item is to be sublet, its proportional value shall be determined administratively on the same basis. This procedure should be followed even when the part not sublet consists only of procuring the materials. However, when a firm both sells materials to a prime contractor and performs the work of incorporating the materials into the project, these two phases must be considered in combination and as constituting a single subcontract.

(g) The State highway agency shall not permit any of the contract work to be performed under a subcontract unless such arrangement has been authorized by the State highway agency in writing. Prior to authorizing a subcontract, the State highway agency shall assure that the subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. A copy of each such written authorization shall be furnished promptly to the division engineer.

(h) The State highway agency shall establish procedures (including procedures for identifying and furnishing the contractor with the names and addresses of potential minority subcontractors, including suppliers of materials and equipment), acceptable to the division engineer, to assure:

(1) That in all solicitations, either by competitive bidding, or negotiation, for subcontracts, including procurements of materials and leases of equipment, each potential subcontractor, supplier or lessor is notified by the contractor of the contractor's obligations relative to non-discrimination on the grounds of race, color, sex, or national origin;

(2) That in the selection and retention of subcontractors, including procurements of materials and leases of equipment, the contractor does not discriminate on the grounds of race, color, sex, or national origin; and

(3) That subcontract agreements, including procurements of materials and leases of equipment, unless exempt by the

regulations of the Secretary of Transportation (49 CFR Part 21) or directives issued pursuant to the regulations, shall contain the contract provisions implementing Title VI of the Civil Rights Act of 1964 (23 CFR Part 633).

§ 635.114 Participation in progress payments.

Federal funds will participate in the estimated costs to the State highway agency of construction accomplished as the work progresses, based on claims submitted by State highway agency. When the contract provisions provide for stockpiling, the amount of the claim upon which participation is based may include the appropriate value of approved specification materials delivered by the contractor at the project site or other designated location in the vicinity of such construction, or stockpiled by the contractor at a location not in the vicinity of such construction, if the division engineer determines that (a) because of required fabrication at an off-site location the materials cannot be stockpiled in the vicinity of the project, (b) the materials have been purchased by the contractor, and (c) the materials conform with the requirements of the plans and specifications. The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the project. This value may not exceed the appropriate portion of the value of the contract item or items in which such material is to be incorporated.

§ 635.115 Use of material made available by a public agency.

(a) Contracts for highway projects shall require the contractor to furnish all materials to be incorporated in the work and shall permit the contractor to select the sources from which the materials are to be obtained. Exception to this requirement may be made when there is a definitive finding by the State highway agency and concurred in by the division engineer, that it is in the public interest to require the contractor to use material furnished by the State highway agency or from sources designated by the State highway agency. In cases such as this, the FHWA does not normally expect mutual sharing of costs unless the State highway agency receives a related credit from another agency or political subdivision of the State. Where

such a credit does accrue to the State highway agency, it shall be applied to the Federal-aid project involved. The designation of a mandatory material source may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost. Otherwise, if a State highway agency proposal to designate a material source for mandatory use would result in higher project costs, Federal-aid funds shall not participate in the increase even if the designation would conserve other public funds.

(b) The provisions of paragraph (a) of this section will not preclude the designation in the plans and specifications of sources of local natural materials, such as borrow aggregates, that have been investigated by the State highway agency and found to contain materials meeting specification requirements. The use of materials from such designated sources shall not be mandatory unless there is a finding of public interest as stated in paragraph (a) of this section.

(c) Federal funds may participate in the cost of specification materials made available by a public agency when they have been actually incorporated in accepted items of work, or in the cost of such materials meeting the criteria and stockpiled at the locations specified in § 635.14.

(d) To be eligible for Federal participation in its cost, any material, other than local natural materials, to be purchased by the State highway agency and furnished to the contractor for mandatory use in the project, must have been acquired on the basis of competitive bidding, except when there is a finding of public interest justifying the use of another method of acquisition. The location and unit price at which such material will be available to the contractor must be stated in the special provisions for the benefit of all prospective bidders. The unit cost eligible for Federal participation will be limited to the unit cost of such material to the State highway agency.

(e)(1) When the State highway agency or another public agency owns or has control over the source of a local natural material, the unit price at which such material will be made available to the contractor must be stated in the plans or special provisions. Federal participation will be limited to (1) the cost of the material to the State highway

agency; or (2) the fair and reasonable value of the material, whichever is less.

(2) Special cases may arise that will justify Federal participation on a basis other than that set forth in § 635.15(e)(1) above. Such cases should be fully documented and receive advance approval by the division engineer.

(f) Costs incurred by the State highway agency or other public agency for acquiring a designated source or the right to take materials from it will not be eligible for Federal participation if the source is not used by the contractor.

(g) The contract provisions for one or a combination of Federal-aid projects shall not specify a mandatory site for the disposal of surplus excavated materials unless there is a finding by the State highway agency with the concurrence of the division engineer that such placement is the most economical except that the designation of a mandatory site may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost.

§ 635.116 Restrictions upon materials.

No requirement shall be imposed and no procedure shall be enforced by any State highway agency in connection with a project which may operate (a) to require the use of, or provide a price differential in favor of, articles or materials produced within the State, or otherwise to prohibit, restrict or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States; or (b) to prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin to any greater extent than is permissible under policies of the Department of Transportation as evidenced by requirements and procedures prescribed by the Administrator to carry out such policies.

§ 635.117 Material or product selection.

(a) Federal funds shall not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process, specifically set forth in the plans and specifications for a project, unless

(1) Such patented or proprietary item is purchased or obtained through competitive bidding with equally suitable unpatented items; or

(2) The State highway agency certifies either that such patented or proprietary item is essential for synchronization with existing highway facilities, or that no equally suitable alternate exists; or

(3) Such patented or proprietary item is used for research or for a distinctive type of construction on relatively short sections of road for experimental purposes.

(b) When there is available for purchase more than one nonpatented, nonproprietary material, semifinished or finished article or product that will fulfill the requirements for an item or work on a project and these available materials or products are judged to be of satisfactory quality and equally acceptable on the basis of engineering analysis and the anticipated prices for the related item(s) of work are estimated to be approximately the same, the plans, specifications and estimates for the project shall either contain or include by reference the specifications for each such material or product that is considered acceptable for incorporation in the work. If the State highway agency wishes to substitute some other acceptable material or product for the material or product designated by the successful bidder or bid as the lowest alternate, and such substitution results in an increase in costs, there will not be Federal-aid participation in any increase in costs.

(c) A State highway agency may require a specific material or product when there are other acceptable materials and products, when such specific choice is approved by the division engineer as being in the public interest. When the division engineer's approval is not obtained, the item will be nonparticipating unless bidding procedures are used that establish the unit price of each acceptable alternative. In this case Federal-aid participation will be based on the lowest price so established.

(d) Appendix A of this subpart sets forth the FHWA requirements regarding the specification of alternative types of culvert pipes, and the number and types of such alternatives which must be set forth in the specifications for various types of drainage installations.

§ 635.118 Bonus payments.

The policy of the FHWA is not to participate, directly or indirectly, in any part of a bonus to the contractor for completing a project in advance of the time specified.

§ 635.119 Use of publicly owned equipment.

(a) Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local unit of government for highway construction purposes may be warranted or justified. A proposal by any State highway agency for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be in the public interest to do so under the conditions peculiar to the individual project or locality.

(b) As used herein the term "publicly owned equipment" means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations. The term "rental" includes depreciation and expense of upkeep in addition to other charges.

(c) Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the proposed use of such equipment is clearly set forth in the plans, specifications and estimates submitted to the division engineer for approval. In such cases the advertised specifications shall also specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged therefor, and the points of availability or delivery of the equipment, together with the express condition that the successful bidder has the option either of renting part or all of such equipment from the State or local unit of government or otherwise providing the equipment necessary for the performance of the contract work.

(d) In the rental of publicly owned equipment to contractors, the public agency should not profit at the expense of Federal funds. Accordingly, (1) rental rates shall be reasonably representative of the cost of providing such equipment, or (2) there shall be credited to the project a lump sum amount determined as the approximate profit, if profit is derived by the agency furnishing the equipment, thereby reducing the total participating cost of the project.

(e) Unforeseeable causes may make it necessary to provide publicly owned equipment to the contractor at rental rates agreed to between the contractor

and the State or local unit of government. Any such arrangement shall not form the basis for any increase in the cost of the project on which Federal funds are to participate.

(f) When publicly owned equipment is used on projects constructed on a force account basis, Federal funds may participate whether such work is performed at agreed unit prices, or on an actual cost basis. In the case of force account work to be performed by the State highway agency or local unit of government at agreed unit prices, the equipment need not be itemized nor rental rates shown in the estimate. However, if such work is to be performed on an actual cost basis, the State highway agency shall submit to the division engineer for approval the schedule of rates proposed to be charged, exclusive of profit, for the publicly owned equipment made available for use.

§ 635.120 Claims and claim awards.

The eligibility for, and extent of, Federal-aid participation in claim awards made by the State to Federal-aid contractors on the basis of arbitration board awards or State court judgments shall be determined on a case by case basis. Generally, the criteria for establishing Federal-aid participation in claims and resultant settlements is the extent to which such settlements are grounded in contract provisions and specifications and actual costs incurred. Where legal issues arise in the course of resolving a claim, any data submitted for consideration shall include a brief from the legal counsel for the State setting forth the basis for determining the extent of the State's liability for the claims under local law.

§ 635.121 Changes and extra work.

(a) Subsequent to authorization by the division engineer to proceed with a project or any undertaking thereunder, no change shall be made which will increase the cost of the project to the Federal Government or alter the termini, character or scope of the work without prior authorization by the division engineer.

(b) All major changes in the plans and contract provisions and all major extra work must be approved in writing by the division engineer in advance of their effective dates except that when emergency or unusual conditions justify, the division engineer may, give tentative advance approval orally to such changes or extra work and ratify such approval in writing as soon thereafter as practicable.

For minor changes and minor extra work written approval is necessary but such approval may be given retroactively at the discretion of the division engineer. Such minor changes and minor extra work items would include, but not necessarily be limited to, modifications in construction items within the scope of the plans and contract provisions when such modifications are required during the progress of construction.

(c) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and concurrence by the division engineer.

§ 635.122 Contract time and contract time extensions.

Contract time extensions granted by a State highway agency which affect project costs or liquidated damages, shall be subject to the concurrence of the division engineer and will be considered in determining the amount of Federal participation. To be approved by the division engineer, extensions of contract time must be fully justified and adequately documented.

§ 635.123 Submission of contract and force account documents.

A conformed copy of the contract between the State highway agency and the construction contractor and of each force account agreement shall be furnished to the division engineer as soon as practicable after it is executed.

§ 635.124 Labor and employment.

(a) (1) No convict labor shall be employed in the construction of a project or used for maintenance or any other purpose at the site or within the limits of any Federal-aid project from the time of program approval to final acceptance of the work by the State highway agency and removal of all free labor therefrom except as provided in § 635.24(a) (2) below. Program approval is interpreted to refer to approval of the program for any phase of the project; such as preliminary engineering, right-of-way acquisition, or physical construction.

(2) Convict labor may be employed at the site of a project after approval of the program including the project and prior to the time of award of the construction contract or the start of work on force account construction in routine physical maintenance operations, as de-

scribed and defined in the Manual of Highway Accounting Procedures adopted in 1958 by the American Association of State Highway Officials. In the event stage construction operations are involved, convict labor may be used in routine physical maintenance operations during the interim between final acceptance by the State highway agency of the current stage construction and the award of contract, or start of force account work, for the next succeeding stage.

(b) No procedure or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project. The selection of labor to be employed by the contractor on any Federal-aid project shall be of his own choosing.

(c) Employment shall be provided without regard to race, color, religion, sex, or national origin.

(d) The advertisement or call for bids on any contract for the initial construction of a project on the Federal-aid system either shall include the minimum wage rates determined therefor by the Secretary of Labor or shall provide that such rates are set out in the advertised specifications, proposal or other contract document, and shall further specify that such rates are a part of the contract covering the project.

(e) When construction work on Federal-aid highways is being performed by any Federal agency under its procedures and by Federal contract, the labor standards relating to direct Federal contracts shall be applicable.

§ 635.125 Health and safety.

Contracts for projects shall include provisions designed (a) to insure full compliance with all applicable Federal, State and local laws governing safety, health and sanitation, and (b) to require that the contractor shall provide all safeguards, safety devices and protective equipment and shall take any other actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

§ 635.126 Termination and default of contract.

(a) When a Federal-aid contract is terminated by the State highway agency, the extent of Federal-aid participation in the contract costs, including final settlement, will depend upon the merits of the individual case. In no event will Federal funds participate in any allowance for anticipated profit on work not performed.

(b) Normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when a State highway agency awards the contract for completion of a defaulted Federal-aid contract. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed either:

(1) The amount representing the payments made under the defaulted contract plus payments made under the new contract, or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract, whichever amount is the lesser.

(c) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA would then consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

§ 635.127 False statements.

The following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to and viewable by all personnel concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON
FEDERAL-AID HIGHWAY PROJECTS**

United States Code, Title 18, section 1020, reads as follows:

Whoever, being an officer, agent, or employee of the United States, or any State or Territory, or whoever, whether a person, association, firm or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary or Transportation; or

Whoever, knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to the material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.

§ 635.128 Determination and documentation of pay quantities.

(a) The State highway agency shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.

(b) Records of initial source documents pertaining to the determination of pay quantities, are among those records and documents which must be retained pursuant to 23 CFR Part 17.

APPENDIX A.—Summary of acceptable criteria for specifying types of culvert pipes

Type of drainage installation	Alternatives required			AASHTO designations to be included alternatives	Application	Remarks
	Yes	No	No.			
Cross drains under high type pavement. ¹	-----	X	-----	-----	Statewide-----	Any AASHTO approved material. ¹
Other cross drain installations.	X	-----	3 minimum...	M-170 and M-190	do-----	Do. ¹
Side drain installations	X	-----	3 minimum...	M-36	do-----	Do. ¹
Special installation conditions.	-----	X	-----	-----	Individual installation.	Specified to meet special conditions.
Special drainage systems (storm sewers, inverted siphons, etc.).	-----	X	-----	-----	do-----	Specified to meet site requirements.

¹Types not included in currently approved AASHTO specifications may be specified if recommended by the State with adequate justification and approved by FHWA.

¹High type pavement is generally described as FHWA construction type codes I, J, K, L, and plant mix and penetration macadam segments, respectively shown in the right-hand columns of type codes G and H having a combined thickness of surface and base of 7 inches or more (or equivalent) or that are constructed on rigid bases.

Subpart B—Force Account Construction

Source: 39 FR 35158, Sept. 30, 1974, unless otherwise noted.

§ 635.201 Purpose.

The purpose of this subpart is to prescribe procedures in accordance with 23 U.S.C. 112(b) for a State highway agency to request approval that highway construction work be performed by some other method than by contract awarded by competitive bidding.

§ 635.202 Application.

This subpart applies to all Federal-aid and other highway construction projects financed in whole or in part with Federal funds and to be constructed by a State highway agency or a subdivision thereof in pursuance of agreements between any State highway agency and the Federal Highway Administration (FHWA), except projects located on the Federal-aid Secondary System and constructed under a Certification Accept-

ance Plan in those States where the Secretary has discharged his responsibility pursuant to 23 U.S.C. 117.

§ 635.203 Definitions.

The following definitions shall apply for the purpose of this subpart:

(a) A "State highway agency" is that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.

(b) The term "some other method" of construction as used in 23 U.S.C. 112(b) shall mean the "force account" method of construction as defined herein. In the unlikely event that circumstances are considered to justify a negotiated contract or another unusual method of construction, the policies and procedures prescribed herein for force account work will apply.

(c) The term "force account" shall mean the direct performance of highway construction work by a State highway agency, a county, a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by them and used under their direct control.

(d) The term "county" shall mean any county, township, municipality or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.

§ 635.204 Determination of public interest.

(a) Congress has expressly provided in the cited legislation that the contract method based on competitive bidding shall be used by a State highway agency or county for performance of highway work financed with the aid of Federal funds unless there is an affirmative finding that under the circumstances relating to a given project it is in the public interest to perform the work by some other method.

(b) It may be found in the public interest for a State highway agency or county to undertake a federally financed highway construction project by force account when a situation exists in which the rights or responsibilities of the community at large are so affected as to require some special course of action, including situations where there is a lack of bids or the bids received are unrea-

sonable. The cost, by force account, in all cases must be reasonable.

§ 635.205 Finding of public interest.

(a) Pursuant to authority in 23 U.S.C. 112(b), it is hereby determined that:

(1) By reason of the inherent nature of the operations involved it is in the public interest to perform by force account the adjustment of railroad or utility facilities and similar type facilities owned or operated by a public agency, a railroad, or a utility company, provided the costs are reasonable and that the organization is qualified to perform the work in a satisfactory manner. The installation of new facilities shall be undertaken by competitive bidding except as provided in § 635.44 (b) and (c). The term "adjustment of railroad facilities" includes the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. The term "adjustment of utilities" includes minor installations of new facilities to provide power, minor lighting, telephone, water and similar utility services to a rest area, weigh-station, movable bridge, or other highway appurtenance, provided such installation cannot feasibly be done as incidental to a major installation project such as an extensive highway lighting system.

(2) Because of the urgent necessity for timely completion of temporary operations (i.e., emergency repairs, the need for which is concurred in by the division engineer, undertaken during or immediately following the occurrence of a natural disaster or catastrophic failure, to reduce the extent of damage, to protect remaining facilities or to restore travel), it is in the public interest to perform such temporary operations either by force account or by the contract method. Therefore, the work may be performed by the method most suited for the work and a formal affirmative finding is not required in either case.

(b) When a State highway agency desires that highway construction work financed with the aid of Federal funds, other than the kinds of work designated under § 635.44(a) or projects located on the Federal-aid secondary system and constructed under an approved Certification Acceptance Plan be undertaken by force account, it shall submit a written request to the division engineer identifying and describing the project and the kinds of work to be performed,

the estimated costs therefor, the estimated Federal funds to be provided, and setting forth the reason or reasons that force account for such project is considered to be in the public interest.

(c) The division engineer shall notify the State highway agency in writing of his determination that under the circumstances relating to the project, force account is or is not found to be in the public interest.

Subpart C—Physical Construction Authorization

SOURCE: 39 FR 27130, July 25, 1974, unless otherwise noted.

§ 635.301 Purpose.

To prescribe the policies and procedures under which a State highway department may be authorized to advance a Federal-aid highway project to the physical construction stage.

§ 635.302 Applicability.

The provisions of this directive are applicable to all Federal-aid highway construction projects except projects constructed under an approved Certification Acceptance Plan.

§ 635.303 Physical construction.

For purposes of this directive the physical construction of a project is considered to consist of the actual construction of the highway itself with its appurtenant facilities. It includes any removal, adjustment or demolition of buildings or major obstructions, and utility or railroad work that is a part of the contract for the physical construction.

§ 635.304 Coordination.

(a) The right-of-way clearance, utility, and railroad work are to be so coordinated with the physical construction that no unnecessary delay or cost to the physical construction will occur.

(b) All right-of-way clearance, utility, and railroad work performed separately from the contract for the physical construction of the project is to be accomplished under the provisions of the Federal-Aid Highway Program Manual, Volume 7, Chapter 4, Section 2 (PPM 80-6.1); Volume 1, Chapter 4, Section 4 (PPM 30-4); or Volume 1, Chapter 4, Section 3 (PPM 30-3), respectively.

§ 635.305 Authorization.

Authorization to advertise the physical construction for bids or to proceed

with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:

(a) The plans, specifications, and estimates (PS&E) therefor have been approved.

(b) A statement is received from the State, either separately or combined with the information required by section 635.-305(c), that either all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right-of-way clearance, utility, and railroad work which is to be underway concurrently with the highway construction.

(c) A statement is received from the State certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to relocatees adequate replacement housing in accordance with the provisions of the current Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:

(1) All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage or demolish these improvements and enter on all land.

(2) Although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the oc-

cupants of all lands and improvements have vacated and the State has physical possession and right to remove salvage or demolish these improvements.

(3) The circumstances with respect to acquisition or right of occupancy and use of a few parcels warrant proceeding with advertisement for bids or with force account construction on the basis it will be in the public interest to do so in advance of completion of the acquisition of the rights of the said few parcels. The physical construction, except for the removal or demolition of permanently vacated improvements, will not be permitted to proceed until the occupants of all residentially improved properties have vacated and specific dates for termination of operation of business have been established so as not to interfere in any way with construction operations. When justified, the requirements concerning the vacation of residentially improved properties and the establishment of specific dates for termination of business operations may be waived by the Regional Administrator (FHWA) in cases where there is a definite finding by the highway department and concurred in by the Regional Administrator (FHWA) that it is in the public interest to proceed with the physical construction. This certification may be resorted to only in very unusual circumstances. This exception should never be allowed to become the rule. When this certification is used, full explanation and reasons therefor must be given including identification of right-of-way parcels where right to physically occupy and use is not obtained. Estimated date for each parcel must be given when physical occupancy and use will be obtained and substantiation that such date is realistic. Appropriate notification shall be provided in the bid proposals in accordance with Volume 6, Chapter 4, Section 1, Subsection 6 (PPM 21-6.3, paragraph 6e).

(d) The State highway department has satisfied the requirements of Volume 7, Chapter 7, Section 5 (PPM 20-8) where applicable or, under alternate procedures which have been incorporated in an approved Action Plan, has submitted public hearing transcripts, certifications and reports pursuant to 23 U.S.C. 128.

(e) An affirmative finding of public interest has been made as required by

23 U.S.C. 112, in case construction by some method other than contract based on competitive bidding is contemplated.

(f) Minimum wage rates determined by the Department of Labor in accordance with the provisions of 23 U.S.C. 113, are in effect and will not expire before the end of the period within which it can reasonably be expected that the contract will be awarded.

(g) A statement has been received that right-of-way has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of right-of-way is not required.

(h) A statement has been received that the steps relative to relocation advisory assistance and payments as required by the current FHWA directive(s) covering the administration of the Highway Relocation Assistance Program have been taken, or that they are not required.

(i) The Division Engineer (FHWA) has determined that appropriate measures have been included in the PS&E in keeping with approved guidelines, for minimizing possible soil erosion and water pollution as a result of highway construction operations.

(j) The Division Engineer (FHWA) has determined that requirements of Volume 7, Chapter 7, Section 2 (PPM 90-1) have been fulfilled and appropriate measures have been included in the PS&E to satisfy interests of the public, and Federal, State, and local agencies.

(k) Where utility facilities are to use and occupy the right-of-way, the State has demonstrated to the satisfaction of the Division Engineer (FHWA) that the provisions of Volume 1, Chapter 4, Section 4 (PPM 30-4, paragraph 16b) have been fulfilled.

(l) The Division Engineer (FHWA) has verified the fact that adequate replacement housing is in place and has been made available to all affected persons.

(m) Where applicable, areawide agency review has been accomplished as required by 42 U.S.C. 3334 and 4231-4233.

(n) The Division Engineer (FHWA) has determined that the PS&E provide for the erection of only those information signs and traffic control devices that conform with the standards developed by the Secretary of Transportation and do

not include construction identification or other informational signs regarding such State matters as the identification of responsible State officials.

PART 636 [RESERVED]

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

Subpart A—Inspection and Approval of Construction Projects (Exclusive of Sampling and Testing)

Sec.

- 637.101 Purpose.
- 637.102 Definitions.
- 637.103 Policy.
- 637.104 Inspection objectives.
- 637.105 Annual Division Construction Inspection Program.
- 637.106 Final acceptance reports.

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- 637.201 Purpose.
 - 637.202 Definitions.
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 - 637.204 Objectives.
 - 637.205 State sampling and testing program.
- Appendix A Guide Letter of Certification by State Engineer

AUTHORITY: 23 U.S.C. 114, 204, 209, 210, and 315; 49 C.F.R. 1.48(b) (11), (31), and (35).

Subpart A—Inspection and Approval of Construction Projects (Exclusive of Sampling and Testing)

SOURCE: 39 FR 11879, Apr. 1, 1974, unless otherwise noted.

§ 637.101 Purpose.

The purpose of the regulations in this part is to prescribe the policies, procedures, and guides relating to inspections and approval of Federal-aid highway construction projects, except those constructed pursuant to 23 U.S.C. 117, and inspections of projects under the direct supervision of the Federal Highway Administration (FHWA).

§ 637.102 Definitions.

(a) The term "division engineer" means the chief FHWA official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) The word "project" means; (1) a specific section of a highway route together with all appurtenances and construction to be performed thereon under

one or more contracts; (2) or any work on a highway route performed on a force account basis by a public agency, public utility, railroad company, or other such organization.

§ 637.103 Policy.

(a) Federal-aid highway construction projects. Except for those projects undertaken pursuant to 23 U.S.C. 117, it is the policy of FHWA that FHWA personnel make sufficient inspections of Federal-aid highway construction projects to assure that each project is completed in reasonably close conformity with the approved plans and specifications, including authorized changes and extra work.

(b) Other federally-funded highway construction projects. It is the policy of FHWA that FHWA personnel make sufficient inspections on direct Federal-highway construction projects (under the direct supervision of FHWA), forest highways, forest development roads and trails, park roads and trails, parkways, Indian reservation roads, public lands highways, public lands development roads and trails, and defense access roads to assure that each project is completed in reasonably close conformity with the approved plans and specifications including authorized changes and extra work. Moreover, it is the policy of FHWA to make appropriate coordination with those agencies funding projects under the direct supervision of FHWA.

§ 637.104 Inspection Objectives.

The objectives of construction inspections are: (a) To determine if the State highway department's control procedures (for Federal-aid construction) or the contracting officer's control procedures (for direct Federal construction) are sufficient, and are being effectively applied to assure FHWA that the construction is performed in reasonably close conformity to the approved plans, specifications, and contract provisions;

(b) To provide opportunity for timely remedial action in situations where FHWA is not assured that construction is performed in reasonably close conformity to the approved plans, specifications, and contract provisions; and

(c) To encourage and promote improved techniques of construction and engineering supervision.

§ 637.105 Annual Division Construction Inspection Program.

(a) Each division engineer shall annually prepare, and submit to his Regional Federal Highway Administrator for approval by April 15 of the calendar year for which the program is prepared, a formal construction inspection program for the projects described in § 637.101. The annual construction inspection program shall provide for initial inspection of a project early in its lifetime, for final inspection of a project promptly after completion of its physical construction, and other inspections of the type and frequency deemed necessary by the division engineer. However, for small projects or those of short duration, the initial inspection may be combined with the final inspection.

(b) Each annual formal construction inspection program shall describe the extent of participation therein by State highway departments and interested Federal agencies.

§ 637.106 Final Acceptance Reports.

The division engineer shall issue a final acceptance report for each Federal-aid project as soon as all project requirements have been met and the project is ready for final acceptance as a completed Federal-aid project.

Subpart B—Sampling and Testing of Materials and Construction

SOURCE: 39 FR 35649, Oct. 3, 1974, unless otherwise noted.

§ 637.201 Purpose.

The purpose of the regulations in this subpart is to prescribe policies, procedures and guides relating to sampling and testing of materials and construction in Federal-aid highway projects except those constructed pursuant to 23 U.S.C. 117, and projects constructed under direct supervision of the Federal Highway Administration (FHWA).

§ 637.202 Definitions.

For the purpose of this subpart the following definitions apply:

(a) The term "Acceptance Samples and Tests" means all of the samples and tests used for determining the quality and acceptability of the materials and

workmanship which have been or are being incorporated in the project.

(b) The term "division engineer" means the chief FHWA official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) The term "Independent Assurance Samples and Tests" means independent samples and tests or other procedure performed by State personnel who do not normally have direct responsibility for process control and acceptance sampling and testing. They are used for the purpose of making independent checks on the reliability of the results obtained in acceptance sampling and testing.

(d) The term "National Reference Laboratories" means the American Association of State Highway and Transportation Officials (AASHTO) Materials Reference Laboratory (AMRL) and the Cement and Concrete Reference Laboratory (CCRL), each operated by the National Bureau of Standards.

(e) The term "Process Control Samples and Tests" means all of the samples taken and tested for the purpose of controlling the production of materials proposed for incorporation in the project.

(f) The term "Project" means a specific section of a highway route together with all appurtenances and construction to be performed thereon under one or more contracts.

(g) The term "State highway agency" shall have the same meaning as that set forth for "State highway department" in subsection 101(a) of title 23, United States Code.

§ 637.203 Policy.

(a) *Sampling and testing program.* It is the policy of FHWA that each State highway agency shall have a sampling and testing program which will provide adequate assurance that the materials and workmanship incorporated in each Federal-aid highway construction project are in reasonably close conformity with the requirements of the approved plans and specifications including approved changes. The program shall have provisions for acceptance and independent assurance samples and tests. The

program shall be developed by the State and approved by FHWA.

(b) *National Reference Laboratories.* It is the policy of FHWA to encourage all State highway agencies to participate in each regular inspection tour and comparative sample testing program of the CCRL and AMRL.

§ 637.204 Objectives.

The objectives of sampling and testing are:

(a) To determine through process control and/or acceptance sampling and testing whether the construction operations controlled by sampling and testing and materials used or proposed for use in the construction work are in reasonably close conformity with approved plans and specifications including approved changes;

(b) To provide through independent assurance sampling and testing by personnel not normally responsible for process control or acceptance sampling and testing for checks on reliability of acceptance sampling and testing; and

(c) To provide opportunity for timely remedial action when results of sampling and testing indicate materials used or proposed for use and the construction work accomplished or in progress are not in reasonably close conformity with the approved plans and specifications including approved changes.

§ 637.205 State sampling and testing program.

(a) Significant elements required in the State's sampling and testing program are as follows:

(1) *Acceptance samples and tests.* (i) The point in the construction process at which acceptance sampling and testing is to be done shall be specified.

(ii) A guide schedule for taking and testing of acceptance samples shall be developed which will give general guidance to personnel responsible for acceptance sampling and testing yet provide them with reasonable latitude for adaptation to specific project needs.

(2) *Independent assurance samples and tests.* (i) The point in the construction process at which independent assurance sampling and testing is to be done shall be specified. This shall normally be

at the same point in the construction process as acceptance sampling and testing is done for a particular material or construction operation.

(ii) A guide schedule for taking and testing independent assurance samples shall be developed which will give general guidance to personnel responsible for the State-wide sampling and testing program yet give them reasonable latitude for adaptation to specific project needs.

(iii) The program shall provide for a reasonable portion of the independent assurance sampling and testing to be performed by State personnel who have no direct responsibility for the process control and acceptance sampling and testing using test equipment other than that assigned to the project.

(iv) The program shall provide for comparison of independent assurance test results with the acceptance test results.

(b) Records related to the sampling and testing program shall be retained in accordance with the records retention schedule in Appendix A to Part 17 of Subchapter A of this title. During the active stages of construction they shall be kept at a location or locations where they will be readily accessible for review by the FHWA.

(c) A material certification conforming in substance to Appendix A shall be prepared by the State and submitted to the FHWA division engineer for each Federal-aid construction project covered by this directive.

(d) Should questions as to quality of materials or workmanship arise, the State shall promptly furnish information and perform additional sampling and testing on federally funded projects when specifically requested to do so by the FHWA division engineer.

APPENDIX A

(GUIDE LETTER OF CERTIFICATION BY STATE ENGINEER)

Date _____

_____ Project No. _____

This is to certify that:

The results of the tests on acceptance samples indicate that the materials incorporated in the construction work and the construction operations controlled by sam-

pling and testing were in reasonably close conformity with the approved plans and specifications, and such results compare favorably with the results of independent assurance sampling and testing.

Exceptions to this certification are documented in the project records.

Director of Laboratory
or other
Appropriate State Official

PARTS 638—639 [RESERVED]

PART 640—CERTIFICATION ACCEPTANCE

Sec.

- 640.1 Purpose.
- 640.3 Definitions.
- 640.5 Effect of State Certification approval.
- 640.7 Finding of equivalency basis for approval.
- 640.9 Content of State Certification.
- 640.11 Systems actions, program and project approval and authorization.
- 640.13 Final inspection and acceptance.
- 640.15 Evaluation of State's operation.
- 640.17 Effect of State's noncompliance.
- 640.19 Rescission.

AUTHORITY: (23 U.S.C. 101(e), 117 and 315).

SOURCE: 39 FR 17310, May 15, 1974, unless otherwise noted.

§ 640.1 Purpose.

The purpose of this part is to provide an alternative procedure for administering certain highway projects to be constructed with Federal fund participation in lieu of the detailed Federal Highway Administration (FHWA) procedure provided for in 23 U.S.C. 101, et seq., and regulations issued pursuant thereto which require FHWA review and approval at various stages of individual project development.

§ 640.3 Definitions.

(a) The word "administrator" means the Federal Highway Administration.

(b) The term "Certification Acceptance" is the alternative procedure which may be used for administering certain highway projects involving Federal funds pursuant to 23 U.S.C. 117.

(c) The term "State highway agency" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The word "State"

should be considered equivalent to the term "State highway agency" if the context so implies.

(d) The term "State Certification" means a written statement prepared by a State highway agency, signed by its chief administrative officer and approved by the Federal Highway Administrator, setting forth the State's organization and capability and the laws, regulations, directives and standards it will use, or cause to be used, in the administration of certain highway projects.

(e) The word "project" means an undertaking by a State highway agency for highway construction, or if the context so implies, the particular portion of a highway so constructed.

(f) The word "construction" shall be as defined in 23 U.S.C. 101.

§ 640.5 Effect of State Certification approval.

(a) Approval of a State's Certification relieves the State of compliance with Title 23, United States Code, and those requirements issued pursuant thereto with respect to all construction projects under Certification Acceptance except as otherwise provided in this part.

(b) Forest Highways, Public Lands, and Emergency Relief projects, all projects included under Sections 131, 136 and 319(b) of Title 23, United States Code, and all projects constructed under the provisions of sections 203, 204, 205, 209, 210, and 230 of the Federal-Aid Highway Act of 1973 (Pub. L. 93-87, 87 Stat. 250) may be included in a State's Certification and processed under the regulations in this part.

(c) A State may include all or part of its eligible programs or projects in the Certification submitted for approval.

(d) The Certification Acceptance procedure shall not apply to transportation planning and research (23 U.S.C. 134 and 307), highway safety (23 U.S.C., Chapter 4), those public transportation projects proposed pursuant to sections 142(a) (2), 142(c), and 103(e) (4) of Title 23, United States Code, and projects on the Interstate System, except as otherwise provided in this part.

(e) Approved Action Plans will serve to satisfy the requirements of Certification Acceptance for such preconstruction

activities as are covered in the Action Plan.

(f) Approval of a State Certification does not constitute a commitment or an obligation of Federal funds.

(g) Certification Acceptance is an alternative procedure which replaces detailed FHWA procedures with inspection and monitoring of a State's operations under State laws and procedures, which must assure that adequate consideration is given to proposed highway projects and that the decisions on such projects are made in the best overall public interest. The alternative procedure recognizes the unique situation of each State and does not prescribe specific organizations or procedures. Certification approval endorses the adequacy of a State's processes for achieving Federal objectives but does not constitute approval of individual projects.

(h) Certification Acceptance as an alternative procedure does not replace the fundamental provisions of law in Title 23, United States Code, with respect to the basic structure of the Federal-aid highway program, such as the authorization of funds (23 U.S.C. 102), Federal-aid systems (23 U.S.C. 103), apportionment (23 U.S.C. 104), programs (23 U.S.C. 105), designation of urbanized area boundaries (23 U.S.C. 101(a)(2)), allocation of urban system funds (23 U.S.C. 150), Federal share payable (23 U.S.C. 120), and toll roads and bridges (23 U.S.C. 129). Nor are the provisions of Title 23, United States Code, conferring a benefit or privilege abrogated by the approval of a State's Certification.

(i) Nothing in this part shall affect or discharge any responsibility or obligation of the Administrator under any Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d), et seq.), Title VIII of the Act of April 11, 1968 (Pub. L. 90-284, 42 U.S.C. 3601, et seq.), and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), other than Title 23, United States Code.

§ 640.7 Finding of equivalency basis for approval.

(a) Approval of a State's Certification will be based upon a finding by FHWA that the State laws, regulations, directives, and standards establish requirements at least equivalent to those contained in, or issued pursuant to Title 23, United States Code. The statutory phrase "State laws, regulations, directives, and standards establishing requirements at least equivalent to those contained in, or issued pursuant to . . . Title (23)" means State laws, etc., that, collectively, will achieve the Federal objectives in Title 23, United States Code. The statutory phrase does not mean State laws, etc., the same as or exactly like or identical to those in Title 23, United States Code, and issued pursuant thereto.

(b) Equivalency of State laws, regulations, directives, and standards with Title 23, United States Code, and requirements issued pursuant thereto shall be determined by finding the State has laws or regulations or directives or standards each of which contain requirements separately and/or all of which contain requirements collectively on:

- (1) Construction and design,
- (2) Competitive bidding,
- (3) Payment of prevailing wages as determined in accordance with the Davis Bacon Act (40 U.S.C. 267a),
- (4) Prohibition of convict labor unless the labor is performed by convicts on parole or on probation,
- (5) Maintenance,
- (6) Relocation of utilities,
- (7) Public hearings,
- (8) Construction and maintenance of ferry boats where applicable,
- (9) Safeguarding the State and Federal interest in instances of irregularities,
- (10) Equal employment opportunity,
- (11) Control of outdoor advertising, and
- (12) Control of junkyards.

(c) Equivalency of State laws, regulations, directives, and standards with Title 23, United States Code, and requirements issued pursuant thereto shall also be determined by finding that the State laws, etc., in the subject areas listed in § 640.7(b) will achieve the following

Federal objectives of having Federal-aid and Federal highways constructed in a manner that will:

(1) Meet existing and probable future traffic needs,

(2) Be conducive to safety, durability, economy of maintenance and utilization by elderly and handicapped persons,

(3) Conform to the particular needs of each locality,

(4) Provide all-weather service,

(5) Provide uniform informational, regulatory and warning signs, markings, and signals that will promote the safe and efficient utilization of the highways,

(6) Provide proper safety protective devices at railroad grade crossings and drawbridges,

(7) Minimize soil erosion,

(8) Assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following:

(i) Air, noise, and water pollution,

(ii) Destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services,

(iii) Adverse employment effects, and tax and property value losses,

(iv) Injurious displacement of people, businesses and farms, and

(v) Disruption of desirable community and regional growth.

(9) Provide for public participation in the development of projects in the location and design stages,

(10) Provide for competitive bidding that will effectively secure competition and punish fraud, bribery, collusion, conspiracy or other serious offense involving violation of State or Federal criminal statutes.

(11) Provide for an equal employment opportunity program including highway construction training and skill improvement programs, and

(12) Preserve natural beauty.

§ 640.9 Content of State Certification.

The State Certification shall include the following:

(a) The name of the State highway agency and the legal authority which permits such agency to comply with Title 23, United States Code, and other applicable Federal statutes and Executive Orders.

(b) A positive statement that projects administered under Certification Acceptance will comply with all applicable Federal statutes and Executive Orders. By such statement, the Federal laws and Executive Orders so applicable are incorporated by reference.

(c) A statement of the systems, programs, phases of work and classes of projects or combinations thereof that the State is including in the Certification being submitted for approval.

(d) A description or a table of organization of the State highway agency and an outline or flow chart indicating steps in project development and assignments of responsibility.

(e) A description of the methods and control procedures the State will follow to assure compliance with State and Federal requirements in the administration of projects covered by the State Certification, including the management, operational, and financial systems within the State's organization that insure the proper control of highway construction activities, accountability of Federal highway funds and the presentation of legitimate and correct claims to FHWA.

(f) A statement of the design and construction standards applicable to Certification Acceptance procedure projects. Where the Certification refers to American Association of State Highway and Transportation Officials (AASHTO), American Society of Testing Materials (ASTM), or other published standards and procedures, or incorporates any FHWA or other Federal publication or directive, these need not be submitted.

(g) A description of the State's methods for assuring local government knowledge of and compliance with State and Federal requirements where they perform services on projects to be administered under the Certification Acceptance procedure.

(h) A statement that all projects under Certification Acceptance shall be available for review by FHWA at any time and that all project documents shall be retained and available for inspection during the plan development, and construction stages and for a 3-year period after submission of the final voucher for the project.

(i) State Certifications are to be signed by the Chief Administrative Officer of the State highway agency or the official or officials of the State charged by its laws with the responsibility for highway construction an submitted to FHWA through the FHWA division engineer by letter.

§ 640.11 Systems actions, program and project approval and authorization.

(a) Federal-aid highway systems actions and program approval shall be administered in compliance with applicable Title 23, United States Code, requirements and in accordance with applicable current FHWA directives issued pursuant thereto.

(b) Authorization to proceed with the project or any phase of the work shall be in response to a State request and may be concurrent with or subsequent to program approval. A project agreement is to be executed on each project.

(c) During the progress of the authorized project, the State highway agency shall furnish FHWA such information as the Administrator determines necessary in administering the Federal-aid highway program under Certification Acceptance.

§ 640.13 Final inspection and acceptance.

(a) FHWA shall make an inspection of each physical construction project upon its completion.

(b) The State shall furnish in respect to each construction project, as soon as practicable after project completion, a confirmation that the project was completed as programmed and in accordance with the procedures and standards contained in the State's Certification, with a request for final acceptance by the FHWA. Such confirmation shall include assurance that all applicable State and Federal laws have been complied with and shall be signed by the appropriate

State official. The burden shall be upon the State to show compliance and the State shall furnish, upon request, all project documents and any other information pertaining to the project as necessary for final acceptance.

§ 640.15 Evaluation of State's operation.

(a) Evaluations of the State's operation under the Certification Acceptance procedure shall be made by FHWA.

(b) As a part of the evaluation, the existing State Certification is to be reviewed to determine its adequacy in light of this part, the statutes in effect at the time of the review, and the operational reviews made by FHWA.

§ 640.17 Effect of State's noncompliance.

(a) The Administrator shall determine whether a State has failed to comply with State and Federal law in implementing Certification Acceptance, and the decision shall be administratively final. A final judgment rendered against the State highway agency by a State court for noncompliance with State law in this respect will be prima facie evidence of a State's failure to comply with this directive.

(b) Failure to comply with Federal or State laws may be remedial and repairable or nonremedial and irreparable. In the event the noncompliance is remedial, corrective action shall be required to protect the Federal interest. If the noncompliance cannot be remedied or corrected, the Administrator will determine the action to be taken.

§ 640.19 Rescission.

(a) The Administrator's approval of a State's Certification may be rescinded at any time if, in the Administrator's opinion, it is necessary to do so.

(b) In the event a State's Certification is rescinded, the provisions of Title 23, United States Code, and the regulations issued pursuant thereto are immediately applicable. All required approvals must be obtained on projects which have not been processed beyond the obligation stage. Projects upon which FHWA has given authorization to proceed and obligation of the Federal share has occurred

shall not be affected by rescission except in unusual cases where such action is necessary to protect the Federal interest.

(c) The Administrator shall provide the State with a written notice stating the reasons for his intention to rescind a State's Certification and the State shall have the opportunity to respond orally or in writing before a final decision is made. The Administrator's decision to rescind a State's Certification shall be administratively final.

PART 641 [RESERVED]

PART 642—SECONDARY ROAD PLAN¹

- Sec.
- 642.1 Purpose.
- 642.2 Definitions.
- 642.3 Policy.
- 642.4 Applicability.
- 642.5 Secondary Road Plan Agreement.
- 642.6 Requests to revise or amend Plan Agreements.
- 642.7 State-Federal administrative procedures.
- 642.8 FHWA review and inspection of projects.
- 642.9 FHWA evaluation of State's operation under the Secondary Road Plan.
- 642.10 Exceptions.

AUTHORITY: 23 U.S.C. 117, 23 U.S.C. 315, and 49 CFR 1.48.

SOURCE: 38 FR 11341, May 7, 1973, unless otherwise noted. Redesignated at 39 FR 10430, Mar. 20, 1974.

§ 642.1 Purpose.

The purpose of this part is to prescribe policies and procedures for administering Federal-aid secondary highway projects in accordance with the Secondary Road Plan.

§ 642.2 Definitions.

As used in this part—

(a) The Secondary Road Plan is the plan which may be used for administering Federal-aid secondary projects, pursuant to a Secondary Road Plan Agreement. (The term "Secondary Road Plan" is hereinafter referred to as the "Plan.")

(b) A Secondary Road Plan Agreement is a written statement prepared by a State highway department and approved by the Federal Highway Administrator, setting forth the procedures and standards the State highway department

will use, or cause to be used, in the administration of projects under the Plan.

§ 642.3 Policy.

(a) Based upon the provisions of 23 U.S.C. 117, and its legislative history, it is the policy of the Federal Highway Administration (FHWA) to extend to State highway departments maximum flexibility and simplicity in procedures, operations, and standards under the Plan and to encourage maximum State-local initiative and cooperation in selecting and developing projects under the Plan.

(b) The State highway departments shall follow sound engineering, administrative, and managerial practices to assure economy, efficiency, and honesty in the expenditure of Federal, State, and local matching funds, as well as comply with all Federal and State laws.

(c) Except as noted below, Federal Highway Administration regulations and other unpublished directives do not apply to projects administered under the Plan unless the State chooses to adopt them.

§ 642.4 Applicability.

The Plan shall apply, in those States which have adopted it, to all projects financed with regular and rural Federal-aid secondary (FAS) funds on the approved Federal-aid secondary system, including FAS projects on urban extensions of the secondary system. By mutual agreement between the State and FHWA, Defense Access Road and Appalachian Local Access Road projects on the approved FAS system may also be administered in whole or in part under the terms of the State's Secondary Road Plan Agreement.

§ 642.5 Secondary Road Plan Agreement.

The Secondary Road Plan Agreement shall include the following:

(a) A positive statement that projects administered under the Plan will comply with all Federal laws, Executive orders, and the provisions of the Federal-aid regulations in 23 CFR Part 1 applicable to the Plan. By such statement, the Federal laws, Executive orders, and regulations so applicable are incorporated by reference.

(b) A clear and concise statement that the State will follow, as a minimum, the procedures in § 642.7 of this part.

¹ Redesignated at 39 FR 10430, Mar. 20, 1974.

(c) A brief description of the State highway department organization which will administer Federal-aid secondary projects. This is to include a description of the secondary road unit prescribed in 23 U.S.C. 302(a).

(d) A brief description of the State's methods for assuring local government knowledge of and compliance with State and Federal requirements on projects constructed under the plan when such local governments accomplish any phase of work (e.g., acquire right-of-way, prepare PS&E or supervise construction). Examples of methods are: a State directives system for counties, periodic meetings with responsible local officials, plans-in-hand inspections, construction inspections, etc.

(e) A brief description of how FAS funds are distributed between State and local roads and between the local governments within the State.

(f) A statement that all projects constructed under the Plan, as well as documents thereof, are subject to inspection by FHWA personnel at any time during project development and for the 3-year period after FHWA payment of the final voucher.

(g) A statement of the minimum geometric and structural design standards, as well as noise and air quality standards, that will apply to the design of Federal-aid secondary projects for the varying conditions that may be encountered.

§ 642.6 Requests to revise or amend Plan Agreements.

A State may request to revise or amend its Plan Agreement by letter, signed by the chief administrative officer of the State highway department. The request shall include the revised or amended procedures and/or standards which the State proposes to follow, or have followed, to accomplish projects under the Plan.

§ 642.7 State-Federal administrative procedures.

Procedures to be used in the implementation of Federal-aid Secondary Road Plan projects are as follows:

(a) The Federal-aid secondary system shall be selected in accordance with 23 U.S.C. 103(c) and 23 CFR 1.6. Each route on the system shall be appropri-

ately numbered and described. Requests to change the system shall be in writing and accompanied by supporting information.

(b) Not less than 50 percent of the Federal-aid secondary funds apportioned to a State, after deduction of the highway planning survey funds, shall first be made available to the appropriate local road officials and shall remain available for at least 1 year for roads not on the State highway portion of the Federal-aid secondary system. However, in a State that has full financial responsibility for the construction and maintenance of a very substantial percentage of the total local highway mileage, Federal-aid secondary funds in excess of 50 percent may be applied to those highways for which the State is responsible that are included in the Federal-aid secondary system.

(c) Projects shall be programed in accordance with 23 U.S.C. 105 and 23 CFR 1.8.

(d) Proposals for construction projects shall be submitted for review and comment to State, regional, and/or metropolitan clearinghouses as designated by the Federal Office of Management and Budget's Circular A-95, as amended. Comments received as a result of this action shall be given due consideration before an during project development.

(e) The division engineer shall notify the State in writing when the program is approved and when the State is authorized to take actions necessary to advance the work as programmed. Work performed prior to authorization is not eligible for Federal participation.

(f) Relocation payments and assistance shall be provided and right-of-way shall be acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 on each project in which there is to be Federal participation in any phase thereof. No individual or family shall be displaced until decent, safe, and sanitary replacement housing is available to the relocatees for immediate occupancy.

(g) Public hearings shall be held, or the opportunity for public hearings shall be afforded, in accordance with 23 U.S.C. 128. In addition, hearings should be held,

or the opportunity therefor afforded, for all projects to which there is known opposition. Throughout the location and design stages of every project, the most directly responsible highway agency should furnish information on all facets of the project upon request of any interested person or party. Comments and suggestions should be heard and duly considered before final plans are developed. Recordings or transcripts of hearings, along with any required reports and certifications, are to be retained by the State and furnished FHWA only upon request.

(h) The human environment shall be carefully considered and national environmental goals met on all federally financed highway improvements in accordance with 42 U.S.C. 4332(2) (C), 49 U.S.C. 1653(f), 16 U.S.C. 470(f), and 42 U.S.C. 1857(h). Environmental impact statements shall be prepared for each project which will have a significant effect on the quality of the human environment. Drafts of these statements are to be prepared and their availability is to be publicized to permit review and comment by all interested individuals or parties well in advance of any public hearing for the project and/or before the highway agency is committed to a particular course of action on the project. A sufficient number of copies of each such draft are to be furnished FHWA for processing. After sufficient time has elapsed to permit receipt and due consideration of all comments on the draft, a final environmental impact statement shall be prepared and a sufficient number of copies furnished FHWA for processing. For projects having no significant effect on the environment, a written statement (negative declaration), including a description of the proposed work and an explanation of why there will be no significant effect, shall be furnished FHWA. After receiving the applicable statement, the FHWA shall advise the State in writing if there may or may not be Federal participation in the project; if Federal participation cannot be allowed the project shall be withdrawn. The State's action plan for assuring full consideration of the economic, social and environmental effects of Federal-aid projects shall include procedures for projects administered under the secondary road plan.

(i) Any project that will substantially change the quality of the historical,

architectural, archeological, or cultural character of a property listed in the National Register of Historic Places will require special consideration in addition to that listed in § 642.7(j). Such projects shall be coordinated with preservation interests in accord with guidelines promulgated pursuant to 16 U.S.C. 470(f).

(j) Construction contracts shall include provisions which describe the contractor's responsibilities for assuring equal employment opportunity, providing nonsegregated facilities, paying predetermined minimum wages, furnishing payroll information and certificates, assuring safe construction practices, and posting warnings against false statements.

(k) The State shall notify FHWA when a project is complete and/or ready for final inspection by FHWA, and certify that the project has been completed as programed and in accordance with the State's approved Secondary Road Plan Agreement.

§ 642.8 FHWA review and inspection of projects.

(a) Upon receipt of program documents from the State highway department, FHWA shall determine that each project can and will be constructed in accordance with the State's Secondary Road Plan Agreement.

(b) FHWA shall make a physical inspection of each project upon its completion. The purpose of this inspection is to ascertain that the project has been built as programed and in apparent conformance with standards contained or referenced in the State's approved Secondary Road Plan Agreement.

§ 642.9 FHWA evaluation of State's operation under the Secondary Road Plan.

FHWA will periodically evaluate the State's operation under the Plan. This evaluation will include an inspection of all phases of the State's administration of FAS projects, including maintenance. The evaluation may be made all in 1 year or over a period not to exceed 5 years.

§ 642.10 Exceptions.

Exceptions to the agreed procedures and standards in the Secondary Road Plan Agreement may be made in unusual circumstances when approved by FHWA.

PARTS 643—644 [RESERVED]

PART 645—UTILITIES¹**Subpart A—Utility Relocation and Adjustments**
Sec.

- 645.101 Purpose and application.
- 645.102 Definitions.
- 645.103 Eligibility.
- 645.104 Rights-of-way.
- 645.105 Preliminary engineering and engineering services.
- 645.106 Construction.
- 645.107 Agreements and authorizations.
- 645.108 Recording of costs.
- 645.109 Reimbursements basis.
- 645.110 Labor costs.
- 645.111 Materials and supplies.
- 645.112 Equipment.
- 645.113 Transportation of employees.
- 645.114 Utility bills.
- 645.115 Accommodation and installations.
- 645.116 Alternate procedure.

Appendix.

Subpart B—Accommodation of Utilities

- 645.201 Purpose.
- 645.202 Policy.
- 645.203 Application.
- 645.204 Definitions.
- 645.205 General provisions.
- 645.206 Requirements.
- 645.207 Reviews and approvals.
- 645.208 State accommodation policies and procedures.
- 645.209 Use and occupancy agreements.

Appendix.

AUTHORITY.—23 U.S.C. 123; 23 U.S.C. 315; delegation of authority in 49 CFR 1.48(b).

SOURCE: 38 FR 29959, Oct. 31, 1973, unless otherwise noted. Redesignated at 39 FR 10430, Mar. 20, 1974.

Subpart A—Utility Relocation and Adjustments**§ 645.101 Purpose and application.**

(a) To prescribe the policies for the adjustment and relocation of utility facilities on Federal-aid highway projects and projects under the direct supervision of the Federal Highway Administration (FHWA), except Secondary Road Plan projects. It also prescribes the extent to which Federal funds may be applied to the costs incurred by or on behalf of utilities in the adjustment or relocation of their facilities required by the construction of such projects. At the election of the State, an alternate procedure for simplifying the processing of utility relocations and adjustments is provided under § 645.116.

(b) The provisions of this subpart apply to reimbursement claimed by the

State for costs incurred under all State or political subdivision-utility agreements, which are entered into after the date of issuance.

(c) Where lines or facilities to be relocated or adjusted by reason of the highway construction are privately owned, located on the owners' land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the FHWA right-of-way procedures apply.

(d) Where the utility holds a compensable interest in the land occupied by its facilities, and the relocation involves all or a substantial portion of, or extensive damage to, the utility's physical plant or operating facilities, an analysis shall be made by the State, subject to concurrence by FHWA to demonstrate whether the cost of relocation determined under the provisions of this memorandum will exceed the market value of the utility's real property determined by appraisals under FHWA directives applicable to appraisals. Any proposed settlement above the amount established by the appraisal process shall require justification as being the most feasible and economical solution available.

(e) Where State law or regulation provides payment standards more liberal than those established by this subpart the provisions of this subpart shall govern FHWA reimbursement to the State. Conversely, where State law or regulation provides more restrictive payment standards, the State standards shall govern such reimbursement. A determination shall be made by the State subject to the concurrence of FHWA as to which standards will govern, and the record documented accordingly, for each relocation encountered. In making the determination as to which standard is the most restrictive, the net cost of relocation, excluding any cost sharing arrangement between the State and the utility, shall be computed by obtaining the reimbursable amount under each of the following: (1) The State's standards and (2) the standards provided for by this subpart. Any cost sharing arrangement required by law or agreement between the State and the utility shall be applied to the lesser of the two sums so obtained to establish the amount eligible for Federal fund participation.

(f) Where the highway construction which requires the utility relocation is under the direct supervision of FHWA, all references herein to the State are in-

¹ Retitled at 39 FR 36474, Oct. 10, 1974.

applicable. Under such circumstances, it is intended that FHWA be considered in the relative position of the State.

(g) On Secondary Road Plan projects where Federal-aid participation is requested in the costs of utility relocations, the provisions of 23 CFR, Part 642, and the approved Secondary Road Plan agreement will apply.

§ 645.102 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) "Utility" shall mean and include all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof. The term "utility" shall also mean the utility company, inclusive of any wholly owned or controlled subsidiary.

(b) The terms "reimburse" and "participate," or their derivatives, shall mean that Federal funds may be used to reimburse the State on Federal-aid projects, or to make payments to the utility on projects under the direct supervision of FHWA to the extent provided by applicable law.

(c) "Replacement rights-of-way" shall mean the land and interests in land acquired for or by the utility as necessitated by the highway construction.

(d) "Preliminary engineering" shall mean locating, making of surveys, preparation of plans, specifications, and estimates and other related preparatory work in advance of construction operations.

(e) "Construction" shall mean the actual building and all related work including utility relocation or adjustments, incidental to the construction or reconstruction of a highway project, except for preliminary engineering or right-of-way work which is programed and authorized as a separate phase of work.

(f) "Salvage value" is the amount received for utility property removed, if sold; or if retained for reuse, the amount at which the material recovered is charged to the utility's accounts.

(g) "Work order system" is a procedure for accumulating and recording into separate accounts of a utility all

costs to the utility in connection with any change in its system or plant.

(h) "Program approval" shall mean approval by FHWA of programs of projects proposed by the State. Projects involve preliminary engineering, rights-of-way acquisition or construction at specific locations.

(i) "Authorization" shall mean authorization to the State by the Division Engineer to proceed with any phase of a project previously or concurrently given program approval. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

(j) "Relocation" shall mean the adjustment of utility facilities required by the highway project, such as removing and reinstalling the facility, including necessary rights-of-way, on new location, moving or rearranging existing facilities or changing the type of facility, including any necessary safety and protective measures. It shall also mean constructing a replacement facility functionally equal to the existing facility, where necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

(k) "Cost of removal" is the cost of demolishing, dismantling, removing, or otherwise disposing of utility property and cleaning up required to leave the site in a neat and presentable condition.

(l) "Cost of salvage" is the amount expended to restore salvaged utility property to usable condition after its removal.

(m) "Overhead costs" shall mean those costs not chargeable directly to accounts pertaining to the relocation which are determined on the basis of a rate or percentage factor supported by overhead clearing accounts, or such other means as will provide an equitable allocation of actual and reasonable overhead costs to specific relocation jobs. Such costs may include expenses for general engineering and supervision, general office services, legal services, insurance, relief, pensions, taxes and construction engineering and supervision by other than the accounting utility.

(n) "Betterments" shall mean and include any upgrading to the facility being relocated made solely for the benefit of and at the election of the utility, not attributable to the highway construction.

(o) "The cost of any improvements necessitated by or in accommodation to

the highway construction" shall mean the cost of providing improvements in the relocated or adjusted facility that are needed to protect or accommodate the highway and its safe operation.

§ 645.103 Eligibility.

(a) Federal funds may participate, at the pro rata share applicable, in an amount actually paid by a State, or a political subdivision thereof, for the costs of utility relocations under one or more of the following conditions:

(1) Where the utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain.

(2) Where the utility occupies either publicly or privately owned land or public right-of-way, and the State's payment of the costs of relocation is made pursuant to State law and does not violate a legal contract between the utility and the State, provided an affirmative finding has been made by FHWA that such a law forms a suitable basis for Federal-aid fund participation under the provisions of 23 U.S.C. 123.

(3) Where the utility which occupies publicly owned lands or public right-of-way is owned by an agency or political subdivision of a State, and said agency or political subdivision is not required by law or agreement to relocate its facilities at its own expense, provided the State has furnished a statement to FHWA establishing and/or citing its legal authority or obligation to make such payments, and an affirmative finding has been made by FHWA that such a statement forms a suitable basis for Federal-aid fund participation under the provisions of 23 U.S.C. 123. This statement should reflect the basis of the State's payment Statewide except where conditions otherwise limit its application to political subdivisions, projects or individual relocations.

(b) Where a State enacts a new utility relocation statute or amends an existing statute and requests reimbursement pursuant to the provisions of paragraph (a) (2) or (3) of this section, the State shall furnish FHWA copies of the statute, along with a statement reflecting the difference, if any, between the utility relocation payment standards under State law and those established by this subpart. FHWA may conditionally authorize

utility relocations subject to an affirmative finding by FHWA that the State's submission forms a suitable basis for reimbursement under 23 U.S.C. 123. Should at any time the utility relocation statute become a matter of litigation, the State shall so inform FHWA.

(c) Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities where State law prohibits a State from making payment for relocation of utility facilities.

(d) Where the basis of the State's payment of the cost of relocation is made pursuant to the conditions under § 645.103(a) (1), the State shall obtain and have on record suitable evidence of the utility's title to a compensable real property interest. Where the utility's property interest is not a matter of public or private record an affirmative finding by the State's legal counsel of the utility's compensable interest shall be incorporated as part of the State's records. Cases involving the relocation of utilities occupying Federal lands are to be submitted to FHWA for review in accordance with the provisions of § 645.107(1).

(e) Where the advance installation of new utility facilities, crossing or otherwise occupying the proposed right-of-way of a future planned highway project, is either underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the State, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the future planned highway project. Federal funds are eligible to participate in the additional costs incurred by the utility that are attributable to and in accommodation of the planned highway project, provided such costs are incurred subsequent to authorization of the work by the FHWA. Subject to the other provisions of this subpart, reimbursement may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest, and the adjustment of the facility is necessary by reason of the actual construction of the planned highway project.

§ 645.104 Rights-of-way.

(a) Reimbursement may be approved for the cost of replacement right-of-way incurred after the date the work is included in an approved program and re-

placement right-of-way for utilities is authorized by FHWA: *Provided, That,*

(1) The State's payment does not violate the law of the State or violate a legal contract between the utility and State; and

(2) There will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the State for highway purposes; and

(3) The utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project.

(b) Expenses incurred by the utility incident to the acquisition of replacement rights-of-way may be reimbursed. These expenses may include such items as: Salaries and expenses of utility employees while engaged in the appraisal of and negotiation for such right-of-way, amounts paid independent appraisers for appraisals made of such right-of-way, recording costs, deed fees, and similar costs normally paid incident to land acquisition.

(c) The utility shall determine and record its valuation of the replacement rights-of-way that it acquires, prior to negotiation for its acquisition. This means the utility should, by its record be in a position to justify amounts paid for such right-of-way. The valuation may consist of appraisals by utility employees or by independent appraisers. Sound valuation and acquisition practices should be followed by the utility.

(d) Acquisitions of rights-of-way by the State for a utility shall be in accordance with FHWA directives applicable to right-of-way acquisition.

(e) Where the utility has the right-of-occupancy in its existing location by reason of holding the fee, an easement or other real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking and damage of the utility's real property, including the disposal or removal of such facilities, is a matter for consideration as a right-of-way transaction in accordance with FHWA directives applicable to right-of-way acquisition.

(f) Where a utility company has a compensable property interest in land to be acquired for a scenic strip, overlook,

rest area, or recreation area, the State is to take steps necessary to protect and preserve the area or strip being acquired. This will require a determination by the State whether retention of the utility at its existing location, will now or later adversely affect the appearance of the area being acquired, and whether it will be necessary to subordinate or acquire the utility's interests therein, or to rearrange, screen, or relocate the utility's facilities thereon, or both. Where the adjustment or relocation of utility facilities is necessary, the provisions of this subpart apply. In such cases, the State shall determine, subject to concurrence by FHWA, whether the added cost of acquisition attributable to the utility's property interest or facilities which may be located thereon outweigh the aesthetic values to be received.

§ 645.105 Preliminary engineering and engineering services.

(a) Reimbursement may be approved for such costs incurred for preliminary engineering work after the date the work is included in an approved program, and preliminary engineering for utilities is authorized by FHWA.

(b) Where a utility is not adequately staffed to prosecute the relocation, Federal funds may participate in the amounts paid to engineers, architects, and others for required engineering and allied services, provided such amounts are not based on a percentage of the cost of relocation. Where reimbursement is requested by the State for the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements therefor. Federal-aid funds may participate in the cost of such services performed under existing written continuing contracts where it is demonstrated that such work is regularly performed for the utility in its own work under such contracts at reasonable costs. The proposed use of such services, fees, and arrangements therefor, are subject to prior approval by the FHWA, except as provided below:

(1) Where the proposed utility work is relatively simple, and the fees for the proposed engineering services are less than \$5,000, and the FHWA has previously approved a satisfactory statement of procedures the State uses statewide for such matters.

(2) Where the engineering services are performed under existing written con-

tinuing contracts for fees of \$5,000 and less, and it is demonstrated this service is regularly performed for the utility in its own work under such contracts at reasonable costs.

(c) All agreements for the engineering services outlined in § 645.105(b) above, in which Federal-aid funds are to participate, shall include a certificate, as a supplement to said agreement, as shown in appendix to this subpart. The certificate shall be executed by the individual so engaged, or by a principal officer of the firm retained.

§ 645.106 Construction.

(a) Construction costs incurred by a utility subsequent to the date on which the FHWA authorized the State to proceed with the relocation may be reimbursed. Federal funds will not participate in any utility relocation (1) not necessitated by the construction of the highway project or (2) for changes made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

(b) Unless the utility work is made a part of the State's highway construction contract or performed under a separate contract let by the State, as agreed to by the utility and the State with the approval of the FHWA, all utility relocations and all work incidental to such relocation shall be performed by the utility with its own forces, or by a contractor paid under a contract let by the utility, or both. When the contractual method is utilized, pursuant to applicable State law or regulation, Federal funds may participate in the cost of the relocation, where it is demonstrated that the letting of a contract by the State was in the best interest of the State, or that the letting of contract by the utility was necessary because the utility was not adequately staffed or equipped to perform the work with its own forces at the time of relocation.

(c) Where reimbursement is to be requested, any contract to perform work in connection with the utility relocation should be under an award to the lowest qualified bidder who submitted a proposal in conformity with the requirements and specifications for the work to be performed, as set forth in an appropriate solicitation for bids, except as set forth in § 645.106 (d) and (e). Appropriate solicitation shall be accomplished through open advertising in publications, or by circularizing to a list of prequalified

contractors or known qualified contractors.

(d) Federal funds may participate in the costs of relocation work performed under existing written continuing contracts where it is demonstrated that such work is regularly performed for the utility under such contracts at reasonable costs. This may include existing continuing contracts with another utility. Where such other utility has an ownership interest in the facility to be relocated, Federal funds will not be eligible to participate in intercompany profits.

(e) Where the utility proposes to contract outside the requirements under § 645.106 (c) and (d) for work of relatively minor cost or nature, for example, tree trimming and the like, Federal funds may participate in the costs so incurred, provided it is demonstrated that such requirements are impractical and the utility's action did not result in an expenditure in excess of that justified by the prevailing conditions.

(f) All labor, materials, equipment, and other services furnished by the utility shall be billed by the utility direct to the State. The special provisions of contracts let by the utility or the State shall be explicit in this respect. The costs of force account work performed for the utility by the State and of contract work performed for the utility under a contract let by the State, shall be reported separately from the costs of other force account and contract items on the highway project.

(g) Field verification by the State, to justify and support payment for the work done, is necessary to the proper handling of utility relocations and adjustments. A minimum treatment is the procedure outlined under "Utility Adjustments" in the AASHO publication, "Construction Manual for Highway Construction," or any other equally acceptable written procedure mutually agreed upon by a State and the FHWA to accomplish the purpose. The cost of preparing as-built plans, to the extent necessary for the State to verify costs, and/or for highway maintenance purposes, is reimbursable.

§ 645.107 Agreements and authorizations.

(a) Except as provided in paragraph (q) of this section where reimbursement is requested by the State, the utility and the State shall agree in writing on their separate responsibilities in financing and accomplishing the relocation work, either through the use of master agreements

for relocation work to be encountered on an areawide or statewide basis, or through the use of individual agreements on a case-by-case or project basis, or both. The form of the written agreement is not prescribed. Said agreement shall incorporate this subpart and any supplements and revisions thereto by reference, and by inclusion therein or by supplement thereto shall, for each relocation encountered, set forth:

(1) The basis of the State's authority, obligation, or liability to pay for the relocation (reference § 645.103),

(2) The scope, description, and location of the work to be undertaken,

(3) The method to be used by the utility for developing relocation costs (reference § 645.107(h)),

(4) The method to be used for performing the relocation work, either by the utility's forces or by contract, and

(5) That the facilities to be relocated to a position within the highway right-of-way will be accommodated in accordance with the provisions of 23 CFR Part 645, Subpart B.

(b) The agreement shall be supported by plans, specifications where required, and estimates of the work agreed upon, which shall be sufficiently informative and complete to provide the State and FHWA with a clear showing of work required in accordance with paragraphs (1) and (j) of this section.

(c) FHWA shall indicate approval of the written agreement by endorsement thereon. Such approval and any conditions or qualifications attached thereto are for the purpose of informing the State of the extent that Federal funds are eligible to participate in the costs incurred under the approved agreement, subject to the provisions of this subpart.

(d) Where applicable, the written agreement shall set out by separate clause the terms and amounts of any contribution made or to be made by the utility to the State in connection with payments by the State to the utility under the provisions of § 645.103. Federal funds are not eligible to participate in any costs for which the utility repays a State or political subdivision for the State's pro rata share, or portions thereof, of the cost of relocation.

(e) In cases involving the installation of highway lighting, traffic signal, water, electric power and similar facilities that are to serve a highway purpose, and where under established practice in a

locality the ownership of such facilities is to remain with a utility company rather than the State or a political subdivision, Federal-aid highway funds may participate in the cost of constructing such facilities for public highway purposes when found to be in the public interest by FHWA, provided assurances are made in the State-utility agreement that the utility will:

(1) Adequately maintain such facilities and provide continuous quality service;

(2) Record the cost of such facilities as a contribution by the State and maintain related accounting records in accordance with applicable provisions of the *Uniform System of Accounts* prescribed by the Federal Power Commission—esp., Account 271—Contributions in Aid of Construction, its equivalent or its successor;

(3) Eliminate from the rate determination process (a) the original cost to the State of all such facilities and (b) the corresponding current and cumulative depreciation amounts; and

(4) Relinquish ownership and possession of all such facilities to the State should the utility either go out of business or be sold to another company unwilling to abide by the terms of the agreement.

Where a publicly owned utility is involved paragraph (e) (2) and (3) of this section may be modified as appropriate to reflect current accounting and rate determination practices used by the utility.

(f) Where the relocation involves work to be paid by the State and work to be done at the expense of the utility, and reimbursement is requested by the State, the written agreement shall state the share to be borne by each party; that is, by the State and by the utility. Reimbursement shall follow the basis of cost allocation set out in the agreement, except where adjustment is required by changes between the work planned and accomplished.

(g) In the event there are changes in the scope of work, extra work, or major changes in the planned work covered by the approved agreement, plans and estimates, reimbursement therefor shall be limited to costs covered by a modification of the agreement, or a written change or extra work order, approved by the State and FHWA. Emergency situations may be processed in the manner

prescribed by paragraph (c) of this section.

(h) Agreements shall set forth the method of developing the relocation costs which shall be one of the following alternatives:

(1) Actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(2) Actual direct and related indirect costs accumulated in accordance with an established accounting procedure developed by the utility and approved by the State and FHWA. Where such a procedure is proposed by a utility, approval by FHWA will be limited to an accounting procedure which the utility uses in its regular operations.

NOTE.—The use of unit costs, such as broad gauge units of property, where the utility maintains and regularly uses such unit costs in its own operations will be considered as meeting the requirements under § 645.107(h) and (1) and (2) above, provided that such unit costs and supporting records are representative of the actual direct and related indirect costs, accumulated under the accounting procedure prescribed by the regulatory body having jurisdiction over the utility or the accounting procedure approved by the State and FHWA.

(3) An agreed lump sum where the estimated cost to the State of the proposed adjustment does not exceed \$10,000 and the utility's cost estimate and method of estimating, including the use of unit costs, such as broad gauge units of property, where used by the utility in its own work are determined adequate to support the lump sum method. The lump sum agreement shall be supported by a plan prepared in accordance with § 645.107(j); specifications where required, and a detailed cost estimate prepared in a manner that will permit comparison with the agreement and supporting plans, which will give the State and FHWA a clear understanding of the work proposed. The agreement shall be subject to the prior approval of the State and FHWA. Except where unit costs are used and approved, the estimate shall show such details as man-hours by class and rate; equipment charges by type, size, and rate; materials and supplies by items and price; and payroll additives and other overhead factors, with a statement of what is included in each, and the basis for determining the percentage used. Where determining whether the

cost of relocation falls within the ceiling for lump sum utility agreements, it is not necessary to reflect the estimated costs of utility work not attributable to the highway construction or not eligible for Federal fund participation.

(4) Where work is to be performed by forces of a utility, the nature of whose regular business is such that its accounting system is not designed or required to classify, record, and otherwise reflect the results of operation on a continuing basis in terms of physical work items, the estimate of cost shall include reference to the support to be (i) presented with the claim for reimbursement, and (ii) maintained by the utility for subsequent review. The claim for reimbursement shall be accompanied by a duly certified post-construction compilation of cost, showing such details as man-hours by class and rate; equipment by types, size, and rate; materials and supplies by items and price. Upon review of claims as herein contemplated and as otherwise required, the State and FHWA shall make such determinations as are appropriate in the circumstances, including any necessity for audit at the site of the utility.

(i) The estimate in support of the agreement shall set forth the items of work to be performed, broken down as to estimated cost of labor, construction overhead, materials and supplies, handling charges, transportation and equipment, rights-of-way, preliminary engineering, and construction engineering, including an itemization of appropriate credits for salvage, betterments, and expired service life, all in sufficient detail to provide a reasonable basis for analysis. The factors that will be included in the utility's construction overhead account shall be set forth. Materials are to be itemized where they represent relatively major components or cost in the relocation. Unit costs, such as broad gauge units of property, may be used for estimating purposes where the utility uses such units in its own operations.

(i) The supporting plans or drawings for the utility relocation shall be sufficiently informative to provide a clear picture of the work to be done and shall show:

(1) The location, length, size and/or capacity, type, class, and pertinent operating conditions and design features, of existing, proposed, and temporary facilities, including proposed changes

thereto, and disposition thereof, all by appropriate nomenclature, symbols, legend, notes, color coding or the like;

(2) The project number, plan scale and date, the horizontal and, where appropriate, the vertical location of the utility facilities in relation to the highway alignment, geometric features, stationing, grades, structures, and other facilities, proposed and existing right-of-way lines, and where applicable, the access control lines;

(3) Where applicable, the limits of right-of-way to be acquired from, by, or on behalf of the utility; and

(4) By appropriate notes or symbols, that portion of the work to be accomplished, if any, at the sole expense of the utility.

(j) On projects where the State plans to request reimbursement for utility relocation costs, it is necessary to show under the character of work on Form PR-1 that "utility relocations" are included. The utility work may be programmed either as part of the right-of-way acquisition phase, or the construction phase of the highway project, or as a separate utility relocation project. Where feasible, arrangements should be made to program all phases of the utility work under a single project.

(k) Where reimbursement is requested, except as otherwise provided by § 645.107 (1), (m), and (n), authorization by the FHWA to the State to proceed with the physical adjustment or relocation of a utility's facilities may be given—

(1) On or after the date the utility relocation is included in an approved program,

(2) After the public hearing has been held or location and design approval has been given for this highway project, and

(3) At such time as the Division Engineer is furnished and reviews plans and estimates reporting adequately the utility work proposed, the location of the highway project, and the utility relocation, and

(4) When the Division Engineer is furnished and reviews the proposed or executed agreement between the State and the utility, and

(5) When the Division Engineer is furnished a schedule for accomplishing the utility work based on the best information available at the time authorization is requested.

(1) In cases where the utility to be relocated occupies Federal lands, FHWA

shall not issue authorization to proceed until the State has submitted a statement signed by a responsible highway official citing the legal basis which establishes the utility's compensable property interest in such lands. In exceptional circumstances, and for good cause shown by the State, FHWA may waive the requirement of submittal of the above statement as a condition precedent to authorization to proceed. Such submittal, however, shall in all instances be a condition precedent to Federal reimbursement.

(m) FHWA may authorize the physical relocation or adjustment of utility facilities before a public hearing or location and design approval, under the following conditions:

(1) Where the utility facilities to be relocated or adjusted occupy, in part or in whole, any rights-of-way authorized by FHWA prior to a public hearing or location/design approval, pursuant to 23 CFR Part 790.

(2) Any relocation or adjustment of utility facilities meeting the requirements of § 645.103(e).

(n) Where mutually agreed to by the State and FHWA, arrangements may be made for advance conditional authorization of utility relocation work at the time of program approval or later, provided the actual physical adjustment or relocation of any utility facilities will not be undertaken until, and unless, the FHWA is furnished and approves for each relocation, the proposed or executed agreement between the State and the utility, including the supporting plans and estimates therefor. The cost of replacement right-of-way so acquired and actually incorporated in the finally approved utility relocation will be eligible for Federal participation.

(o) Where unforeseen circumstances during construction of the highway project necessitate adjustment or relocation of utility facilities, oral arrangements therefor can, and should, be made promptly by the State with FHWA. Where necessary to prevent undue delay or interference with the highway construction, FHWA may establish a date of eligibility for such work and authorize the State to proceed subject to subsequent review and approval of a satisfactory State utility agreement.

(p) Federal funds may not reimburse the State for costs of utility relocations:

(1) Until and unless the FHWA approves the executed agreement between

the State and the utility (except as provided in § 645.107(9)), and

(2) Until and unless a project agreement which includes the work is executed, and

(3) Which are not required by the finally approved project location and highway construction plans.

(q) Where all efforts of the State and the utility fail to bring about written agreement of their separate responsibilities under the provisions of this memorandum, the State shall submit its proposal and a full report of the circumstances to FHWA.

(1) Conditional authorization for the work to proceed may be given to the State, with the understanding that Federal funds will not be paid for work done by the utility, until FHWA has given his approval to the State's proposal.

(2) FHWA will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives, and accelerate the advancement of the construction and completion of projects.

§ 645.108 Recordings of costs.

(a) All utility relocations will be recorded by means of work orders or job orders, except as otherwise approved under § 645.107(h) (2), (3), and (4).

(b) Where the relocation costs are to be developed pursuant to the methods outlined in § 645.107(h) (1) or (2), the individual and total costs properly reported and recorded in the utility's accounts, in accordance with the approved method for developing such costs, shall constitute the maximum amount on which Federal fund participation may be based for the work performed under the approved utility agreement. Separate work orders may be issued for additions and retirements, or the retirements may be included with the construction work order: *Provided, however,* That all items relating to retirements shall be kept distinctly separate from those relating to construction.

(c) Each utility shall keep its work order system in such manner as to show the nature of each addition to, or retirement from a facility, the total cost thereof, and the source or sources of cost.

(d) The provisions of §§ 645.110, 645.111, 645.112, and 645.113 are intended for use in the development of reimbursable costs. It is further intended that

cost development under prescribed or approved systems of accounts shall be the general controlling factor.

§ 645.109 Reimbursement basis.

(a) Where payment by the State for the costs of relocation is made pursuant to the provisions of § 645.103 of this subpart, and such payment is for the entire amount paid by, or on behalf of, the utility properly attributable to the relocation, after deducting therefrom any increase in the value of the new facility, and any salvage value derived from the old facility, reimbursement of such costs may be approved, subject to the following understandings:

(1) "The entire amount paid by or on behalf of the utility properly attributable to the relocation" shall mean the cost of adjusting or rearranging the existing facility, or providing a replacement facility functionally equal to the facility, or portion thereof, being replaced, including the cost of any additions, improvements, removals, or replacement right-of-way necessitated by, or in accommodation of, the highway project.

(2) The deduction for "any increase in value of the new facility" shall include a credit to the project for the cost of:

(i) Any betterments in the facility being replaced or adjusted, and

(ii) Where appropriate, any increase in value attributable to the substitution of a replacement facility for an existing facility, as determined in accordance with the provisions of § 645.109(b).

(3) The deduction for "any salvage value derived from the old facility" shall include a credit to the highway project for the value of the materials removed, as determined in accordance with the provisions of § 645.111 (b) and (c) of this subpart.

(b) In any instance where the relocation involves the substitution of a replacement facility for an existing facility, a determination shall be made whether a credit is due to the project for the value of the expired service life of the facility being replaced, except as provided in § 645.109(b)(1). Such credit shall take into account the effect of such factors as wear and tear, action of the elements, and functional or economic obsolescence of the existing facility, not restored by maintenance during the years prior to the relocation.

(1) A credit to the project for the value of the expired service life of the facility being replaced will not be required where such facility involves only:

(1) Utility line crossings of the highway, or

(ii) Segments of a utility line, other than utility line crossings of the highway, less than 1 mile in length: *Provided*, the replacement facility for such a segment is not of greater functional capacity or capability than the one it replaces, and includes no betterments.

(2) The following shall constitute prima facie evidence that a credit is due to the project for the value of the expired service life of the facility being replaced:

(i) Where the replacement facility is functionally equal to the existing facility which it replaces, and such existing facility involves a segment of a utility line 1 mile or more in length.

(ii) Where the replacement facility is other than a segment of the utility's service, distribution, or transmission lines, such as a building, pumping station, filtration plant, power plant, or substation, production, or transfer or storage facilities, and any other similar operating units of a utility's physical plant or operating facilities.

(iii) Where the replacement facility involves betterments, or is of greater functional capacity or capability than the one it replaces, except for utility line crossings of the highway as provided in § 645.109(b) (1) (i).

(3) Where an affirmative finding is made that a credit for the value of expired service life is due to the project, the credit to be given shall be in an amount bearing the same proportion to the original cost of the facility being replaced as its existing age bears to its estimated total life expectancy.

(4) "The estimated total life expectancy" is the sum of the period of actual use and the period of expectant remaining service life. The period of expectant remaining life may be taken from the utility's records, established through the use of age-life curves, or determined by the interested parties through field inspections, giving due consideration to the quality and frequency of maintenance.

(5) Where original costs are not ascertainable from the utility's accounts and records, they may be estimated by trending back present day costs.

(6) The burden of proof of any exceptions to the foregoing requirements lies with the utility company and will require written explanation to demonstrate that the replacement facility will not remain in useful service for a longer

period than the existing facility would have remained in service, had the replacement not been made, and the reasons therefor.

(7) Exceptions claimed on the basis of predicted functional obsolescence of the replacement facility must be substantiated by formal and planned utility work programs, schedules, or equally suitable documentation, and the utility must satisfactorily demonstrate and justify the reasons why the planned replacement and expansion cannot be accomplished at the time of the highway-utility relocation. Exceptions claimed on the basis of predicted economic obsolescence of the replacement facility must also be substantiated by suitable documentation. Where such exceptions are satisfactorily substantiated, an analysis shall be made to determine any increase in value to the utility resulting from the predicted early retirement and salvage of the replacement facility.

(8) The credit to be obtained for expired service life shall be determined jointly by the utility company and the State, and shall be set forth in the detailed estimate supporting the agreement between the utility and the State.

(c) Additional costs incurred by a utility resulting from complying with governmental or industry codes, or current design practices regularly followed by the utility in its own work may be reimbursed provided either of the following conditions are satisfied:

(1) There is a direct benefit to the highway project; for example, improved appearance, increased highway safety, or added protection.

(2) Compliance with such codes or practices is required under Federal, State, or local governing laws and ordinances.

(d) Except as provided for under § 645.109(c) of this subpart, where the utility elects to install, or it is current practice in the utility's own operations to install, facilities of a type different than the facilities being replaced, such as the substitution of ACSR for copper conductors, underground cables for aerial lines and the like, reimbursement shall be limited to the cost of providing the most economical replacement facility, or restoration of service, functionally equal to the one being replaced.

(e) Where an addition to an existing facility is required by the highway construction, such as an increase in the length of a relocated utility line, the actual costs of the addition are reim-

bursable to the extent the materials in the addition are not of a type or a class superior to the materials in the facility to which the addition is extended, except that the cost of any improvement in type or class which is required in connection with the construction of the project is reimbursable.

(f) Where necessitated by the highway project, Federal funds are eligible to participate in the cost incurred for rehabilitating, moving, or replacing buildings of a utility company, including the equipment and operating facilities therein, which are used for the production, transmission, or distribution of the utility's products. Except where it is demonstrated that the existing building and/or facilities are required to remain in place and in service until a (new) replacement building and/or facilities are constructed and in service at a new location, an analysis shall be made by the State to determine the cost and feasibility of each of the following:

(1) To rehabilitate the building at its existing location.

(2) To move it as a unit intact to its new location.

(3) To dismantle it and reassemble or reconstruct it at its new location, or

(4) To replace it with a new building at the new location.

Reimbursement may be approved for the costs incurred under the most feasible and economical solution available, less appropriate credits for salvage and betterments. Where a (new) replacement building and/or (new) equipment or facilities therein are constructed, credit will also be given to the project in accordance with § 645.109(b).

(g) In no event will the total of all credits required under the provisions of this memorandum exceed the total costs of adjustment, exclusive of the cost of improvements necessitated by the highway construction.

§ 645.110 Labor costs.

(a) Salaries and wages billed at actual rates or at average rates accounting for productive labor hours, retroactive pay adjustments, and expenses paid by a utility to individuals during the periods of time they are engaged in the utility relocations are reimbursable when supported by adequate records, except for engineering or inspection charges which are being reimbursed under the utility's construction overhead account. Costs to

the utility of vacation, holiday pay, company sponsored benefits, and similar costs incident to labor employment, will be reimbursed when supported by adequate records. These may include individuals who are engaged in the direct and immediate supervision of the work at the site of the project and in the actual preparation of the plans and estimates of the relocation.

(b) Overhead construction costs:

(1) So that each relocation shall bear its equitable proportion of such costs, all overhead construction costs not chargeable directly to work order or construction accounts such as, general engineering and supervision, general office salaries and expenses, construction engineering and supervision by other than the accounting utility, legal expense, insurance, relief and pensions and taxes shall be charged to the relocation on the basis of the amount of such overhead costs reasonably applicable thereto. These provisions shall not be interpreted as permitting the addition to utility accounts of arbitrary percentages or amounts to cover assumed overhead costs, but as accepting assignment to the relocation of actual and reasonable overhead costs.

(2) The cost of advertising and sales promotion, interest on borrowed funds or charges for the utility's own funds when so used, resource planning and research programs, stock and stockholder's expenses and similar costs are not considered as necessary and incident to the performance of the relocation and are not eligible for Federal participation.

(3) Premiums paid to an insurance company for Workmen's Compensation, Public Liability and Property Damage Insurance will be reimbursed where, and to the extent, it is determined that, the amounts of the premiums are the products of the proper rates applied to the amounts of paid salaries and wages, exclusive of vacation pay or allowances.

(4) Where it has been the policy of the utility to self-insure against public liability and property damage claims, reimbursement will be at the rate developed by the utility, or in the absence thereof, at a rate not in excess of 1 percent of salaries and wages charged to the job.

(5) The records supporting the entries for overhead costs shall be so kept as to show the total amount, rate, and alloca-

tion basis of each additive, and be subject to audit by representatives of the State and Federal Government.

§ 645.111 Materials and supplies.

(a) Cost: Materials and supplies shall be billed at inventory prices when furnished from the utility's stocks, and at actual cost to the utility when the materials and supplies are not available from the utility stocks and must be purchased for the relocation. The costs of handling at stores or at material yards, the costs of purchasing, the costs of inspection and testing, and any charge for general overhead expense are provided for under § 645.111(1). When not so allocated in the utility's overhead accounts, they may be included in the computation of the prices of materials or supplies. The computation of costs of materials and supplies shall include the deduction of all offered discounts, rebates, allowances, and intercompany profits. In those instances where the book value does not represent the true value of used materials, they shall be charged to the project at the same rate used by the utility in its own work, but in no event shall they be charged at more than the value determined in accordance with the foregoing provisions of this section.

(b) Materials recovered from permanent facility:

(1) Materials recovered in suitable condition for reuse by the utility, in connection with construction or retirement of property, shall be credited to the cost of the project at current stock prices; or if a utility charges recovered material to the material and supply account at original cost or a percentage of current price new, and the utility follows a consistent practice in this regard, the work order shall receive credit accordingly. The foregoing shall not preclude any additional credits when such credits are required by State law or regulations.

(2) The State and FHWA shall have the right to inspect recovered materials prior to disposal by sale or scrap. This requirement will be satisfied by the utility giving written notice, or oral notice with later written confirmation, to the State of the time and place the materials will be available for inspection. This notice is the responsibility of the utility, and it may be held accountable for full value of materials disposed of without notice.

(3) If recovered materials are not suitable for reuse by the utility, they shall be disposed of as outlined in § 645.111 (c) (2).

(4) Where the (new) replacement facility includes materials of a type different than the materials being replaced, such as, aluminum for copper and the like, the credit for the materials recovered from the existing facility shall not exceed whichever is the greater of the following amounts: (1) The original cost of the existing material, or (2) the current cost of the replacement materials.

(c) Materials recovered from temporary use:

(1) Materials recovered from temporary use in connection with a highway project, which are in suitable condition for reuse by the utility, shall be credited to the cost of the project at stock prices charged to the job, less ten (10) percent for loss in service life. The State and FHWA shall have the right to inspect all recovered materials not reusable by the utility. Notice shall be given as provided by § 645.111(b) (2).

(2) Items of materials recovered from temporary use which are unsuitable for reuse by the utility, and which have been determined to have a sale value, shall either be sold, following an appropriate solicitation for bids, to the highest bidder, or if the utility regularly practices a system of disposal by sale which has been determined to be the most advantageous to the utility, credit shall be at the going prices for such used or scrap material as are supported by the records of the utility. The proceeds of the sale shall be credited to the cost of the project. The sale shall be conducted by the utility or at its request, by the State. In no event shall the State or the company be considered as an acceptable bidder for such material.

(d) The cost of salvage shall not exceed the value of the recovered material, which value shall be determined as provided in § 645.111 (b) and (c).

(e) The cost of moving recovered materials from the job site to stores or storage point nearest the job will be reimbursed, subject to the provisions of § 645.111(f).

(f) Reimbursement of removal costs, as reduced by the salvage value of materials removed, may be approved subject to the following conditions:

(1) Where the existing facilities are being replaced by reason of the highway construction: *Provided*,

(i) Such removal is necessary to accommodate the highway project, or

(ii) The existing facilities cannot be abandoned in place, or

(iii) Where it is demonstrated that the estimated salvage value of the materials to be removed will equal, or exceed, the total cost of removal, taking into account all related charges for reconditioning, handling, and transporting the materials to be removed.

(2) Except as otherwise provided under § 645.104(e), where the existing facilities are not being replaced by reason of the highway construction: *Provided*,

(i) Removal is necessary to accommodate the highway project,

(ii) The State has authority to pay the removal costs,

(iii) The utility is not obligated by law, ordinance, regulation, franchise, written agreement, or legal contract to remove its facilities at its own expense, and,

(iv) A credit is given to the project for the salvage value of the materials removed, not to exceed the cost of removal and related charges.

(g) Where removal of the existing facilities is necessary by reason of the highway construction, but the materials to be removed are not suitable for reuse by the utility, or their recovery is not economical, the State shall determine, subject to concurrence by the FHWA, which is the most desirable and economical method of removal to employ; either by the utility or its contractor, or by the highway contractor, or by a separate clearing contract let by the State.

(h) Where, pending their subsequent removal or abandonment, utility lines must be deactivated and rendered harmless as a necessary safety and protective measure to the public or highway project; either by capping, plugging, or by otherwise altering such lines, Federal funds may participate in payments so made by the State, exclusive of removal costs: *Provided*, That

(1) The work is necessitated by the highway project, and

(2) The State has authority to pay such costs, and

(3) The utility is not obligated by law, ordinance, regulation, franchise, written

agreement, or legal contract to do the work at its own expense, or

(4) The work is a necessary and incidental expense to the costs of relocation and/or removal which are eligible for Federal fund participation under the provisions of §§ 645.103 and 645.111(f) of this subpart.

(i) The costs of supervision, labor, and expenses incurred in the operation and maintenance of the storerooms and material yards, including storage, handling, and distribution of materials and supplies, the costs of purchasing, and the costs of testing and inspection, are reimbursable. Costs determined by a rate, or other equitable method of distribution which is representative of the costs to the utility, may be reimbursed.

§ 645.112 Equipment.

(a) Accumulation of costs: Accounts for transportation and heavy equipment are used for the purpose of accumulating expense and distributing them to the accounts properly chargeable with the services. Among the items of expense clearing through these accounts are the following: Depreciation; fuel and lubricants for vehicles (including sales and excise taxes thereon); freight and express on fuel and repair parts, heat, light, and power for garage and garage office; insurance (including public liability and property damage insurance) on garage equipment, transportation equipment and heavy work equipment; license fees for vehicles and drivers; maintenance of transportation and garage equipment, operation of garages; and rent of garage buildings and grounds.

(b) Reimbursement of equipment costs: The equipment expenses may include the cost of supervision, labor, and expenses incurred in the operation and maintenance of the transportation equipment and heavy equipment of the utility, including direct taxes and depreciation.

(c) Reimbursement will be limited to charges which account for costs to the utility of expenses for equipment used (§ 645.112 (a) and (b)). Arbitrary or otherwise unsupported equipment use charges will not be reimbursed.

(1) Small tools: Reimbursement for the use of small tools on a project will be made on the basis of tool expenses accumulated in and distributed through the utilities clearing accounts, or other equitable and supportable allocation

basis; otherwise, it will be limited to actual loss or damage during the period of use. In the latter case, the loss or damage shall be billed in detail and properly supported.

(2) Rental: Where the utility does not have equipment available of the kind or type required, reimbursement will be limited to the amount of rental paid to the lowest qualified bidder following an appropriate solicitation for quotations from owners of the required kind or type of equipment. Existing continuing contracts for rental of transportation and heavy equipment, which the utility determines to be of the most advantage to its operations, may be considered as complying with these requirements. In the event of an emergency, such as a breakdown of the utility equipment or where additional equipment not originally contemplated is needed, and/or compliance with the foregoing requirements would seriously impair the prosecution of the utility work or highway construction, Federal funds may participate in the cost of equipment rental provided the utility can demonstrate that the above circumstances existed, and the rental charges so incurred were reasonable and did not result in and expenditure in excess of that justified by the prevailing conditions.

(d) Where the relocation work is to be performed by forces of a utility through the use of its own equipment, the accounting procedures and reimbursement standards established under § 645.112 (a), (b), and (c) of this subpart shall apply except where the accounting system of the utility does not provide for capitalization of items or equipment acquired and recovery of original cost through depreciation, and use rates cannot be readily determined from the records of the utility. Where it is determined that the utility's accounting system is inadequate in such respects, and that it is not economically feasible to develop such costs under the reimbursement standards set forth in § 645.112 (a), (b), and (c), then eligibility for reimbursement of costs incurred will be dependent upon:

(1) A satisfactory detailed cost estimate submitted by the utility which shall include:

(i) Description, rates, hours, compensation, and number of units of equipment proposed for use on the relocation.

(ii) An adequate explanation of the basis for developing the rates which the utility proposes as compensation.

(2) Incorporation in the State utility agreement, or by supplemental letter agreement, of the classes and types of equipment and the proposed compensation for each.

(e) FHWA may require such verification or further justification as necessary to assure the reasonableness for the compensation to the utility for the use of its equipment.

§ 645.113 Transportation of employees.

(a) The cost of essential transportation performed in automobiles or trucks owned by the utility shall be considered to have been reimbursed in the payment of the operating costs of the conveyance equipment or of the rates representative of the equipment operating expenses as provided herein under "Equipment."

(b) Reimbursement for the required use of automobiles which are privately owned by employees of the utility will be limited to the established rates at which the utility reimburses its employees for use in connection with its own construction and maintenance projects and operations.

(c) Reimbursement may be made for the cost of required commercial transportation by employees of the utility.

§ 645.114 Utility bills.

(a) Periodic progress billings of incurred costs may be made by a utility, if acceptable to the State, and reimbursement may be approved for claims of this type received from a State.

(b) One final and complete billing of all costs incurred shall be made by the utility at the earliest practicable date after completion of the work. The statement of final billing will follow as closely as possible the order of the items in the estimate portion of the agreement between the State and the utility. Except where the estimated and final billing are made pursuant to the requirements of § 645.107(h) (2) (i), the statement of final billings shall be itemized to show the totals for labor, overhead construction costs, travel expense, transportation, equipment, material and supplies, handling costs, and other services. The billing shall be shown in such a manner as will permit comparison with the approved plans and estimates. Materials are to be itemized, where they represent major components or cost in the reloca-

tion, following the pattern set out in the approved estimate as closely as is possible. Salvage credits from recovered and replaced permanent and recovered temporary material should be reported in the bill in relative position with the charge for the replacement or the original charge for temporary use. The final billing shall show:

(1) The description and site of the project;

(2) The Federal-aid project number;

(3) The dates on which the State utility agreement was executed and the first work was performed or, if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred;

(4) The date on which the last work was performed or the last item of billed expense was incurred; and

(5) The location where the records and accounts billed can be audited.

(c) The utility shall make adequate reference in the billing to its records, accounts, and other relevant documents.

(d) All records and accounts are subject to audit by representatives of the State and Federal Government. During the progress of construction and for a period not less than 3 years from the date final payment has been received by the utility company, the records and the accounts pertaining to the construction of the project, and accounting therefor, will be available for inspection by the representatives of the State and Federal Government.

(e) Reimbursement for a final utility billing shall not be approved until and unless the State furnishes evidence that it has paid the utility from its own funds, or funds of a political subdivision, pursuant to State law and subject to §§ 645.103(c) and 645.107(d) of this subpart and, except for lump sums, following an audit of the costs included in the final billing.

§ 645.115 Accommodation and installations.

(a) Utility facilities which are retained, installed, adjusted, or relocated within the right-of-way of a Federal-aid project are to be accommodated in accordance with the provisions of 23 CFR Part 645, Subpart B.

(b) In instances where utility facilities are to use and occupy the right-of-way of a proposed Federal-aid project, on or before the State is authorized to proceed

with the physical construction of the highway project, the State is to demonstrate to the satisfaction of FHWA that:

(1) A satisfactory agreement has been reached between the State and all utility owners or the owners of private lines involved, in accordance with 23 CFR Part 645, Subpart B or arrangements therefor are underway leading to such agreement prior to the final acceptance of the highway construction project by FHWA, and

(2) The interest acquired by, or vested with, the State in that portion of the highway right-of-way to be vacated, used, or occupied by the utility facilities or private lines is of a nature and extent adequate for the construction, operation, and maintenance of the highway project, and

(3) Suitable arrangements have been made between such owners and State for accomplishing, scheduling, and completing the relocation or adjustment work, for the disposition of facilities to be removed from or abandoned within the highway right-of-way, and for the proper coordination of such activities with the planned highway construction. Such arrangement should be made at the earliest feasible date in advance of the planned highway construction, and

(4) The bid proposals for the highway contract include appropriate notification identifying the utility work which is to be undertaken concurrently with the highway construction, in accordance with FHWA directive pertaining to authorization for physical construction, and

(5) The plans for the highway project have been prepared in accordance with the FHWA standards for preparation of plans and specifications for Federal-aid projects.

§ 645.116 Alternate procedure.

(a) At the election of the State, an alternate procedure may be approved for simplifying the processing of utility relocations or adjustments under the provisions of this memorandum. Except as otherwise provided by § 645.116(b), the State will act in the relative position of FHWA for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other related matters required by this subpart as prerequisites for authorizing the utility to proceed with and complete the work.

(b) The scope of the State's approval authority under the alternate procedure includes all actions necessary to advance

and complete all types of utility work under this subpart except in the following instances which are to be reviewed and approved in the normal manner on a case by case basis by FHWA, as prescribed elsewhere in this subpart.

(1) Utility relocations and adjustments involving major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations, reservoirs and the like.

(2) Utility relocations and adjustments falling within the scope of §§ 645.107(1), (m), and (q).

(c) Any State wishing to adopt the alternate procedure may file a formal application for approval by FHWA. The application must include the following:

(1) The State's written policies and procedures for administering and processing Federal-aid utility adjustments, which must make adequate provisions with respect to the following:

(i) Compliance with the requirements of this Part, Subparts A and B, and applicable FHWA directives on third party contracts.

(ii) Advance utility liaison, planning, and coordination measures for providing adequate lead time and early utility relocation to minimize interference with the planned highway construction.

(iii) Appropriate administrative, legal, and engineering reviews and coordination procedures as necessary to determine the legal basis of the State's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under § 645.101(e); the necessity of the proposed utility work and its compatibility with proposed highway improvements; and provide for uniform treatment of the various utility matters and actions, consistent with sound management practices.

(iv) Documentation in the State files of actions taken in compliance with State policies and the provisions of this subpart.

(2) A statement signed by the chief administrative officer of the State highway department certifying that:

(i) Federal-aid utility relocations will be processed in accordance with the applicable provisions of this subpart and the State's utility policies and procedures submitted under § 645.116(c)(1),

(ii) Reimbursement will be requested in only those costs properly attributable to the proposed highway construction

and eligible for participation under the provisions of this memorandum, as determined after appropriate audit by or for the State.

(d) Upon receipt of the formal application by the State for approval of the alternate procedure, FHWA will review the State's submission, utility organization and staffing and evaluate the State's practices and procedures thereunder. Where available, FHWA may use its current evaluation of the State's utility practices and procedures for this purpose. A report of the Division Engineer's findings and recommendations on the adequacy of the State's policies, procedures, practices, and organization is to be submitted to the Regional Administrator along with the State's formal application.

(e) When FHWA is satisfied that the State's alternate procedure and policies and practices thereunder form a suitable basis for approving reimbursement with Federal-aid highway funds, the State may be authorized to proceed with utility relocations in accordance with the certification previously furnished under § 645.116(c)(2): *Provided*,

(1) The utility work has been included in an approved program.

(2) The State submits in writing a request for such authorization which shall include a list of the utility relocations on the project which are to be processed under the alternate procedure, along with the best available estimate of the total costs involved.

(f) The requests and authorization prescribed under § 645.116(e) should be made at the earliest feasible date in advance of the planned highway construction. Authorization by FHWA for the work described under § 645.116(b)(1) and (2) may be combined with the authorizations issued pursuant to § 645.116(e) with the understanding that later referral of the State-utility agreements, supporting plans and cost estimates to FHWA for review and approval will be required pursuant to § 645.107(n).

(g) If, due to unforeseen circumstances, the State later finds that additional utilities must be relocated on a project, they shall so inform FHWA of the additional work to be processed under the alternate procedure and request separate authorization thereof in accordance with the manner prescribed in § 645.116(e). Emergency situations may be handled by advance oral arrangement

and later confirmed in writing to the State by FHWA.

(h) At least once every three years FHWA shall make a comprehensive review and evaluation of all phases of the State's procedures and practices for relocating, adjusting, and accommodating utilities under the approved alternate procedure.

(i) Any changes, additions, or deletions the State proposes to the alternate procedure approved by FHWA pursuant to § 645.116(e) are to be submitted by the State to FHWA for approval prior to implementing the proposed modifications. Such requests by the State, must be accompanied by a statement signed by the chief administrative officer of the State highway department, verifying the certification made under § 645.116(c) (2) and its application to the proposed modifications. FHWA may continue to approve utility work under the previously approved alternative procedure, pending approval of the proposed modifications.

(j) FHWA may suspend approval of the certified procedure and resume approval of all utility relocations, where utility reviews disclose instances of non-compliance with the terms of the State's certification. Federal-aid funds will not be eligible to participate in utility relocation costs incurred by the State that do not qualify under the terms of the certification made pursuant to § 645.116(c) (2) and (1).

(k) The provisions of § 645.116 do not alter the FHWA approval actions required by §§ 645.103(a) (2) and (3), 645.114(e), and 645.115(b) of this subpart or § 645.207(e) of subpart B of this part.

APPENDIX

CERTIFICATION OF CONSULTANT

I hereby certify that I am the _____
(title)

_____ and duly authorized representative of the firm of _____, whose address is _____, and

That, except as expressly stated and described herein, neither I nor the firm of _____ has, in connection with its contract with _____, entered into

(name of utility)
pursuant to provisions of an agreement between the aforementioned utility and the State of _____, as a part of Federal-aid project _____.

(a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm, company, or person, other than a bona fide employee working solely for me or the aforementioned firm, to solicit or secure the contract, or

(b) Agreed, as an express or implied condition for obtaining the award of the contract, to employ or retain the services of any firm, company, or person in connection with the carrying out of the contract, or

(c) Paid, or agreed to pay, to any firm, company, organization, or person, other than a bona fide employee working solely for me or the aforementioned firm, any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

(Statement and explanation of exceptions, if any):

I acknowledge that this certificate is to be furnished to the State highway department and the Federal Highway Administration, in connection with the aforementioned project involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

(Date)

(Signature)

Subpart B—Accommodation of Utilities

§ 645.201 Purpose.

To prescribe policies and procedures for accommodating utility facilities on the rights-of-way of Federal and Federal-aid highway projects. It implements the applicable provisions of 23 CFR 1.23 and 1.27 and 23 U.S.C. 116, with respect to the maintenance obligations of the State thereunder as affected by the use of the rights-of-way of Federal-aid highway projects for accommodating utility facilities.

§ 645.202 Policy.

(a) It is in the public interest for utility facilities to be accommodated on the rights-of-way of a Federal or Federal-aid highway project when such use and occupancy of the highway rights-of-way does not interfere with the free and safe flow of traffic or otherwise impair the highway or its visual quality and does not conflict with the provisions of Federal, State, or local laws or regulations or the provisions of this subpart.

(b) These provisions concern the location and manner in which utility installations are to be made within the rights-of-way of Federal and Federal-aid highway projects and the measures, to be taken by highway authorities to preserve and protect the integrity and visual qualities of the highway and the safety of highway traffic. This subpart shall not be construed to alter the authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by highway

authorities with respect to location and manner of installation.

§ 645.203 Application.

(a) Effective on date of issuance.

(b) It applies to new utility installations within the rights-of-way of active and completed Federal and Federal-aid highway projects, except Secondary Road Plan projects. Application to the projects described under § 645.206 (a) and (d) will be limited to projects that are authorized after October 1, 1969.

(c) It also applies to existing utility installations which are to be retained, relocated, or adjusted within the rights-of-way of active highway projects, as described in § 645.203(b), and to existing lines which are to be adjusted or relocated under § 645.206(c). It shall not be applied to a minor segment of an existing utility installation in such a manner as to result in misalignment of the installation or adjustment of the entire installation except in those cases where a hazardous condition exists as defined in § 645.206(c). Where existing installations are to remain in place within the rights-of-way without adjustment, the State and utility are to enter into an agreement under §§ 645.206(h) or 645.209, as may govern, or existing agreements in effect at the time of the highway construction may be accepted, or amended, as may be appropriate.

(d) Until approval is given to the utility accommodation policies and procedures of the State or its political subdivision by FHWA under § 645.207(b) of this subpart, utility installations within the rights-of-way of Federal and Federal-aid highway projects shall as a minimum, meet the requirements set forth in § 645.206.

(e) The provisions of § 645.206(g) apply only to the lands described therein which are acquired or improved with Federal highway or Federal-aid highway funds.

§ 645.204 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) "Utility facilities and/or utilities" means and includes all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities,

including fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof. The term "utility" means the utility company, i.e., any person or private or public entity owning and/or operating utility facilities as defined in this paragraph, including any wholly owned or controlled subsidiary.

(b) "Private lines" means privately owned facilities which convey or transmit the commodities outlined in paragraph (a) of this section but are devoted exclusively to private use.

(c) "Federal highway projects" are those projects involving the use of funds administered by the Federal Highway Administration (FHWA) where the location, design, or construction of the project is under the direct supervision of the FHWA.

(d) "Federal-aid highway projects" are those projects administered by a State which involve the use of Federal-aid highway funds for the construction or improvement of a Federal-aid highway or related highway facilities or for the acquisition of rights-of-way for such projects, including highway beautification projects under section 319, title 23, United States Code.

(e) "Active Federal or Federal-aid highway projects" are those projects for which any phase of development has been programed for Federal or Federal-aid highway funds and the State or other highway authority has control of the highway rights-of-way. A project will be considered active until the date of its final acceptance by the FHWA and thereafter will be considered completed.

(f) "Rights-of-way" means real property or interests therein, acquired, dedicated, or reserved for the construction, operation, and maintenance of a highway in which Federal-aid or Federal highway funds are or may be involved in any stage of development. Lands acquired under 23 U.S.C. 319(b) (scenic strips—1965 Highway Beautification Act) shall be considered to be highway rights-of-way.

(g) "Highway" means any public way for vehicular travel, including the entire area within the rights-of-way and related facilities, constructed or improved in whole or in part with Federal-aid or Federal highway funds.

(h) "Freeway" means a divided arterial highway with full control of access.

(i) "States" means that department, commission, board, or official of any

State charged by its laws with the responsibility for highway administration.

(j) "Use and occupancy agreement" means the document by which the State, or other highway authority, approves the use and occupancy of highway rights-of-way by utility facilities or private lines.

(k) "Utility service connection" means a service connection from a utilities distribution or feeder line or main to the premises served.

(l) "Secondary Road Plan"—is a statement, prepared by a State highway department and approved by FHWA, in which the State outlines the standards and procedures it will use to plan, design, and construct projects on the Federal-aid Secondary Highway System which are to be financed in part with Federal-aid Secondary Highway Funds in accordance with 23 U.S.C. 117 and Part 642 of this chapter.

(m) "Clear roadside policy" means that policy employed by a highway authority to increase safety, improve traffic operations, and enhance the visual quality of highways by designing, constructing, and maintaining highway roadides as wide, flat, and rounded as practical and as free as practical from physical obstructions above the ground.

(n) "Visual quality" means those desirable characteristics of the appearance of the highway and its environment, such as harmony between or blending of natural and manmade objects in the environment, continuity of visual form without distracting interruptions, and simplicity of designs which are desirably functional in shape but without clutter.

(o) "New utility installations" means initial installations on the highway rights-of-way and the replacement of existing facilities with those of a different type, capacity, or design or replacement at a new location on the rights-of-way. Any replacement of an existing facility or portion thereof with another of the same type, capacity, and design at the same location is considered to be maintenance.

§ 645.205 General provisions.

(a) It is the responsibility of each State to maintain, or cause to be maintained, Federal-aid highway projects as necessary to preserve the integrity, visual quality, operational safety, and function of the highway facility.

(b) Since the manner in which utilities cross or otherwise occupy the rights-of-way of a Federal or Federal-aid high-

way project can materially affect the highway, its visual quality, safe operation, and maintenance, it is necessary that such use and occupancy, where authorized, be regulated by highway authorities. In order for a State to fulfill its responsibilities in this area, it must exercise, or cause to be exercised, reasonable regulation over such use and occupancy through the establishment and enforcement of utility accommodation policies and procedures.

§ 645.206 Requirements.

(a) On Federal highway projects authorized after October 1, 1969, FHWA will apply, or cause to be applied, utility accommodation policies similar to those required on Federal-aid highway projects, as appropriate and necessary to accomplish the objectives of this subpart. Where appropriate, agreements shall be entered into between FHWA and the State or local highway authorities or other government agencies, or existing agreements should be amended, as may be necessary for the Regional Administrator to establish, or cause to be established, adequate control and regulation of use by utilities and private lines of the rights-of-way of Federal highway projects.

(b) Utility accommodation policies and procedures for Federal-aid secondary highway projects will be in accordance with a State's approved Secondary Road Plan under Part 642 of this chapter.

(c) Where the State, or other highway authority, determines that existing utility facilities are likely to be associated with injury or accident to the highway user, as indicated by accident history or safety studies, the responsible highway authority is to initiate appropriate corrective measures to provide a safe traffic environment. Any requests received from the State involving Federal fund participation in the cost of adjusting or relocating utility facilities pursuant to this paragraph shall be subject to the provisions of Part 645, Subpart A of this chapter.

(d) The following procedures apply where the State is without legal authority to regulate the use by utilities or private lines of the rights-of-way of Federal-aid highway projects.

(1) All such projects authorized after October 1, 1969, shall include a special provision in the project agreement for regulating such use of the highway rights-of-way. The provision shall re-

quire that the State will, by formal agreement with appropriate officials of a county or municipal government, regulate, or cause to be regulated, such use by highway authorities on a continuing basis and in accordance with a satisfactory utility accommodation policy for the type of highway involved.

(2) For the purpose of this paragraph, a satisfactory utility accommodation policy is one that prescribes a degree of protection to the highway at least equal to the protection provided by the State's utility accommodation policy approved under § 645.207 (b) and (c).

(3) Such projects may be conditionally authorized in accordance with the provisions of § 645.203(d), pending approval of a satisfactory utility accommodation policy by FHWA under § 645.207(b).

(e) Utilities that are to cross or otherwise occupy the rights-of-way of Federal-aid freeways, including Interstate highways, shall meet the requirements of the AASHO "Policy on the Accommodation of Utilities on Freeway Rights-of-Way". Application of joint development and multiple-use concepts dictates that maximum use of the highway be made for other purposes where such use does not adversely affect the design, construction, integrity, and operational characteristics of the freeway. In the advancement of these concepts and when the State has legal authority to do so and so requests, approval may be given for installing trunkline or transmission type utility facilities within a utility strip on and along the outer border of existing freeway rights-of-way. (See Appendix A.)

(f) In expanding areas along Federal-aid freeways it is expected that utilities will normally install distribution or feeder line crossings of freeways, spaced as needed to serve consumers in a general area along either or both sides of a freeway, so as to minimize the need for crossings of a freeway by utility service connections. In areas where utility services are not available within reasonable distance along the side of the freeway where the utility service is needed, crossings of Federal-aid freeways by utility service connections may be permitted.

(g) The type and size of utility facilities and the manner and extent to which they are permitted within areas of scenic enhancement and natural beauty can materially alter the visual quality and view of highway roadsides

and adjacent areas. Such areas include scenic strips, overlooks, rest areas, recreation areas, the rights-of-way of highways adjacent thereto, and the rights-of-way of highways which pass through public parks and historic sites, as described under section 138, title 23, United States Code.

(1) New utility installations are not to be permitted within the foregoing described lands, when acquired or improved with Federal highway or Federal-aid highway funds, except as follows:

(i) New underground installations may be permitted where they do not require extensive removal or alteration of trees visible to the highway user or impair the visual quality of the lands being traversed.

(ii) New aerial installations are to be avoided at such locations unless there is no feasible and prudent alternative to the use of such lands by the aerial facility and it is demonstrated to the satisfaction of the division engineer that:

(A) Other locations:

(1) Are not available or are unusually difficult and unreasonably costly.

(2) Are less desirable from the standpoint of visual quality.

(B) Undergrounding is not technically feasible or is unreasonably costly.

(C) The proposed installation will be made at a location and will employ suitable designs and materials which give the greatest weight to the visual qualities of the area being traversed. Suitable designs will include, but are not limited to, self-supporting, armless, single-pole construction with vertical configuration of conductors and cable.

(2) The provisions of § 645.206(g) also apply to utility installations that are needed for a highway purpose, such as for highway lighting, or to serve a weigh station, rest or recreational area.

(3) There may be cases of unusual hardship or other extenuating circumstances encountered involving some degree of variance with the provisions of § 645.206(g). Such cases shall be subject to prior review and concurrence by FHWA. Where a hardship case involves a proposed installation within the rights-of-way of a highway passing through a public park, area, or site, as described under 23 U.S.C. 138, the views of appropriate planning or resource authorities having jurisdiction over the land through which the highway passes shall be obtained.

(h) Where the utility has a compensable interest in the land occupied by its facilities and such land is to be jointly owned and used for highway and utility purposes, the responsible highway authority and utility shall agree in writing as to the obligations and responsibilities of each party. Such agreements shall incorporate the conditions of occupancy for each party, including the rights vested in the highway authority and the rights and privileges retained by the utility. The interest to be acquired by or vested in the highway authority in any portion of the rights-of-way of a Federal or Federal-aid highway project to be vacated, used or occupied by utilities or private lines shall be of a nature and extent adequate for the construction, safe operation, and maintenance of the highway project.

§ 645.207 Reviews and approvals.

(a) Each State shall submit a report to FHWA on the authority of utilities to use and occupy the rights-of-way of State highways, the State's authority to regulate such use and the policies and procedures the State employs or proposes to employ for accommodating utilities within the rights-of-way of Federal-aid highways under its jurisdiction. Where applicable, the State shall include similar information on the use and occupancy of such highways by private lines where permitted under State law. The State shall identify those sections, if any, of the Federal-aid highway systems within its borders where the State is without legal authority to regulate use by utilities.

(b) Upon determination by the FHWA that a State's policies and procedures under § 645.207(a) and the policies to be employed pursuant to § 645.206(d) meet the requirements of this subpart, they may be approved for use on Federal-aid highway projects in that State or political subdivision.

(c) Any changes, additions, or deletions the State or political subdivision proposes to the policies and procedures approved by FHWA pursuant to this subpart shall be subject to the provisions of § 645.207 (a) and (b).

(d) The State's practices under the policies and procedures or agreements approved under § 645.207(e) shall be periodically reviewed by FHWA and reported to the Regional Administrator.

(e) When a utility files a notice or makes an individual application or re-

quest to a State to use or occupy the rights-of-way of a Federal-aid highway project, the State is not required to submit the matter to FHWA for prior concurrence, except under the following circumstances:

(1) Installations on Federal-aid highways where the State proposes to permit the use and occupancy by utilities not in accordance with the policies and procedures approved by FHWA under § 645.207(b).

(2) Installations involving unusual hardship cases pursuant to § 645.206(g).

(3) Installations on Federal-aid freeways involving extreme case exceptions, as described in the AASHO "Policy on the Accommodation of Utilities on Freeway Rights-of-Way." (Includes cases involving the application of multiple use and joint development concepts to freeways and utilities, Appendix A.)

(4) Installations on or across Interstate highways where approval has not been given to the utility accommodation policies and procedures under § 645.207(b).

§ 645.208 State accommodation policies and procedures.

(a) This section outlines provisions considered necessary to establish policies and procedures for accommodating utility facilities on the rights-of-way of Federal-aid highway projects. These policies and procedures shall meet the requirements of § 645.206(e) through (h) and shall include adequate provision with respect to the following:

(1) Utilities must be accommodated and maintained in a manner which will not impair the highway or interfere with the safe and free flow of traffic.

(2) Consideration shall be given to the effect of utility installations in regard to safety, visual quality, and the cost or difficulty of highway and utility construction and maintenance.

(3) The use and occupancy of highway rights-of-way by utilities must comply with the State's standards regulating such use. These standards must include but are not limited to the following:

(i) The horizontal and vertical location requirements and clearances for the various types of utilities must be clearly stated. These must be adequate to insure compliance with clear roadside policies for the particular highway involved.

(ii) The applicable provisions of government or industry codes required by law or regulation must be set forth or

appropriately referenced, including highway design standards of other measures which the State deems necessary to provide adequate protection to the highway, its safe operation, visual quality and maintenance.

(iii) Specifications for and methods of installation; requirements for preservation and restoration of highway facilities, appurtenances, and natural features on the rights-of-way; and limitations on the utility's activities within the rights-of-way should be prescribed as necessary to protect highway interests.

(iv) Measures necessary for protection of traffic and its safe operation during and after installation of facilities, including control-of-access restrictions, provisions for rerouting or detouring of traffic, traffic control measures to be employed, limitations on vehicle parking and materials storage, protection of open excavations and the like must be provided.

(4) Compliance with applicable State laws and approved State accommodation policies must be assured. The responsible highway authority's file must contain evidence in writing as to the terms under which utility facilities are to cross or otherwise occupy highway rights-of-way in accordance with § 645.209. All utility installations made on highway rights-of-way shall be subject to approval by the State or by other highway authorities under § 645.206(d) as is required by State law and applicable regulations. However, such approval will not be required where so provided in the use and occupancy agreement for such matters as facility maintenance, installation of service connections on highways other than freeways or emergency operations.

§ 645.209 Use and occupancy agreements.

(a) The use and occupancy agreements setting forth the terms under which the utility is to cross or otherwise occupy the highway rights-of-way must include or by reference incorporate:

(1) The State standards for accommodating utilities. Since all of the standards will not be applicable to an individual utility installation, the use and occupancy agreement must, as a minimum, describe the requirements for location, construction, protection of traffic, maintenance, access restrictions and any special conditions applicable to each installation.

(2) A general description of the size, type, nature, and extent of the utility facilities being located within the highway rights-of-way.

(3) Adequate drawings or sketches showing the existing and/or proposed location of the utility facilities within the highway rights-of-way with respect to the existing and/or planned highway improvement, the traveled way, the rights-of-way lines and, where applicable, the control of access lines and approved access points.

(4) The extent of liability and responsibilities associated with future adjustment of the utilities to accommodate highway improvements.

(5) The action to be taken in case of noncompliance with the State's requirements.

(6) Other provisions as deemed necessary to comply with laws and regulations.

(b) The form of the use and occupancy agreement is not prescribed. At the State's option, the used and occupancy provisions may be incorporated as a part of the reimbursement agreement required by § 645.107.

(c) Area or statewide master agreements covering the general terms of a utility's use and occupancy of the highway rights-of-way may be used provided individual requests for such use and occupancy are processed in accordance with § 645.208(a) (4).

APPENDIX A

(REFER TO 645.206(e))

Application of Joint Development and Multiple Use Concepts to Freeways and Utilities

The third paragraph of Item 2 of the AASHO "Policy on the Accommodation of Utilities on Freeway Rights-of-Way," dated February 15, 1969, provides that a utility may be permitted along a freeway on new location under certain stated conditions.

These provisions for extreme case exceptions to the AASHO policy have served well to preserve and protect the access control feature of interstate highways. Experience has demonstrated the need and merit for continuing this protection on all freeways. This appendix outlines additional FHWA views on these matters. It provides a practical method for applying both the AASHO policy and joint development and multiple use concepts to freeways and utilities, especially at locations within and approaching metropolitan areas where land is scarce and right-of-way is expensive. It preserves the access control feature of these important highways but recognizes the merit and need for accommodating trunkline and transmission type utility fa-

ilities under strictly controlled conditions. Finally, it establishes a basis for accommodating the highest type of utility facilities along and within the rights-of-way of the highest type of highway facilities under conditions where the construction, maintenance, and operations of one do not adversely affect those of the other.

The provisions of this appendix are for application to Interstate highways and other Federal-aid freeways that are open to traffic or under construction. They do not apply to installations on freeway bridge structures or within freeway tunnels and do not alter the provisions for these matters under Items 4 and 6 of the AASHO policy. They may be applied to planned freeway projects as necessary to accommodate the longitudinal relocation of existing trunkline or transmission type facilities which fall in the path of the planned highway construction. However, establishing a utility strip shall not be the basis for expanding Federal-aid highway funds for acquiring rights-of-way widths in excess of that needed for the construction, operation, and maintenance of the freeway.

Where a utility files notice or makes application to a State to use or occupy freeway rights-of-way along routes of one of the Federal-aid highway systems under the foregoing conditions, the matter is to be referred by the State to FHWA for prior concurrence under the well-established procedures for processing cases under the AASHO policy. In each instance there is to be a showing that the provisions of the AASHO policy have been met and the following conditions have been satisfied:

(1) A utility strip will be established by an inward relocation of the access control line to the extent necessary to permit installation of the utility facility outside the access control limits.

(2) The utility strip may be established only where the freeway rights-of-way are of ample width to accommodate utility facilities without adverse effect to the design, construction, integrity, and operational characteristics of the freeway, only where such rights-of-way will not be needed for the foreseeable expansion of the freeway and only where there can be satisfactory provision for any needed highway and/or utility maintenance within the utility strip.

(3) Normally, a utility strip is not to be established at locations where it is feasible to accommodate utilities on frontage roads or adjacent public roads or streets.

(4) The State or its political subdivision is to retain ownership of the freeway rights-of-way so utilized, including control and regulation of the use and occupancy of the rights-of-way by utilities.

(5) Existing fences should be retained and, except along sections of freeways having frontage roads, planned fences should be located at the freeway right-of-way line.

(6) In each case, there must be a showing that installation on the freeway rights-of-way is the most feasible and prudent loca-

tion available from the standpoint of the highway user and utility consumer.

(7) The lateral location of underground installations shall be suitably offset from the slope, ditch, and/or curb line. For poles or other ground-mounted utility facilities, the lateral location shall comply with the clearances set forth in Item 5B of the AASHO policy.

(8) Aerial installations are to be limited to self-supporting single pole construction, preferably with vertical configuration of conductors and cables. Not more than one line of support poles for aerial facilities will be permitted within a utility strip. Joint-use facilities will be allowed.

(9) Service connections from the trunkline or transmission-type facilities to utility consumers will not be permitted from the utility strip.

(10) Suitable advance arrangements are to be made for servicing the utility facilities without access from through-traffic roadways or ramps, in accordance with Item 7 of the AASHO policy. At interchanges, access to utility supports, manholes, or other appurtenances may be permitted from the through-traffic roadways or ramps in accordance with Item 7 of the AASHO policy, but only by permits issued by the highway agency to the utility owner setting forth the conditions for policing and other controls to protect highway users.

(11) Where the freeway passes through or along areas of scenic enhancement and natural beauty, as described in §424.206(g), utility installations shall be made as provided therein.

(12) The facilities installed within a utility strip shall be of durable materials designed for long service life expectancy and relatively free from routine servicing and maintenance.

PART 646—RAILROADS

Subpart A—Railroad-Highway Insurance Protection

Sec.	
646.101	Purpose.
646.103	Application.
646.105	Contractor's public liability and property damage insurance.
646.107	Railroad protective insurance.
646.109	Types of coverage.
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646.117	Real property.
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Appendix A Standard provisions for general liability policies.	

Subpart A—Railroad-Highway Insurance Protection

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b).

SOURCE: 39 FR 36474, Oct. 10, 1974, unless otherwise noted.

§ 646.101 Purpose.

The purpose of this part is to prescribe provisions under which Federal funds may be applied to the costs of public liability and property damage insurance obtained by contractors (a) for their own operations, and (b) on behalf of railroads on or about whose right-of-way the contractors are required to work in the construction of highway projects financed in whole or in part with Federal funds.

§ 646.103 Application.

(a) This part applies:

(1) To a contractors' legal liability for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(2) To the liability which may attach to railroads for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(3) To damage to property owned by or in the care, custody or control of the railroads, both as such liability or damage may arise out of the contractor's operations, or may result from work performed by railroads at or about railroad rights-of-way in connection with projects financed in whole or in part with Federal funds.

(b) Where the highway construction is under the direct supervision of the Federal Highway Administration (FHWA), all references herein to the State shall be considered as references to the FHWA.

§ 646.105 Contractor's public liability and property damage insurance.

(a) Contractors may be subject to liability with respect to bodily injury to or death of persons, and injury to, or destruction of property, which may be suffered by persons other than their own employees as a result of their operations in connection with construction of highway projects located in whole or in part within railroad right-of-way and financed in whole or in part with Federal funds. Protection to cover such liability of contractors shall be furnished under regular contractors' public liability and property damage insurance policies issued in the names of the contractors. Such policies shall be so written as to furnish protection to contractors re-

specting their operations in performing work covered by their contract.

(b) Where a contractor sublets a part of the work on any project to a subcontractor, the contractor shall be required to secure insurance protection in his own behalf under contractor's public liability and property damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of, persons and injury to, or destruction of, property as a result of work undertaken by such subcontractors. In addition, the contractor shall provide for and on behalf of any such subcontractors protection to cover like liability imposed upon the latter as a result of their operations by means of separate and individual contractor's public liability and property damage policies; or, in the alternative, each subcontractor shall provide satisfactory insurance on his own behalf to cover his individual operations.

(c) The contractor shall furnish to the State highway department evidence satisfactory to such department and to the FHWA that the insurance coverages required herein have been provided. The contractor shall also furnish a copy of such evidence to the railroad or railroads involved. The insurance specified shall be kept in force until all work required to be performed shall have been satisfactorily completed and accepted in accordance with the contract under which the construction work is undertaken.

§ 646.107 Railroad protective insurance.

In connection with highway projects for the elimination of hazards of railroad-highway crossings and other highway construction projects located in whole or in part within railroad right-of-way, railroad protective liability insurance shall be purchased on behalf of the railroad by the contractor. The standards for railroad protective insurance established by §§ 646.109 through 646.127 shall be adhered to insofar as the insurance laws of the State will permit.

§ 646.109 Types of coverage.

(a) Coverage shall be limited to damage suffered by the railroad on account of occurrences arising out of the work of the contractor on or about the railroad right-of-way, independent of the railroad's general supervision or control, except as noted in § 646.109(b) (4).

(b) Coverage shall include:

(1) Death of or bodily injury to passengers of the railroad and employees of the railroad not covered by State workmen's compensation laws;

(2) Personal property owned by or in the care, custody or control of the railroads;

(3) The contractor, or any of his agents or employees who suffer bodily injury or death as the result of acts of the railroad or its agents, regardless of the negligence of the railroad;

(4) Negligence of only the following classes of railroad employees:

(i) Any supervisory employee of the railroad at the job site;

(ii) Any employee of the railroad while operating, attached to, or engaged on, work trains or other railroad equipment at the job site which are assigned exclusively to the contractor; or

(iii) Any employee of the railroad not within (i) or (ii) who is specifically loaned or assigned to the work of the contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the contractor or governmental authority.

§ 646.111 Amount of coverage.

(a) Dollar amounts of coverage to be reimbursed from Federal funds shall be limited generally to maximum amounts of \$500,000 for each individual and \$1 million for each occurrence with respect to bodily injury or death; and \$500,000 for each occurrence with an aggregate of \$1 million for the term of the policy with respect to property damage.

(b) In cases involving real and demonstrable danger of appreciably higher risks, higher dollar amounts of coverage for which premiums will be reimbursable from Federal funds shall be allowed. These larger amounts will depend on circumstances and shall be written for the individual project in accordance with standard underwriting practices upon approval of the FHWA.

§ 646.113 Scope of coverage.

(a) Since railroad protective insurance differs somewhat from ordinary casualty insurance, the policies shall be written on an "occurrence" rather than on an "accident" basis. Furthermore, the railroads should be covered for such items as disease and other types of consequential damages not necessarily caused by accidents and damages resulting from intentional acts of the contractor or his employees.

(b) Policies should not be so written as to cover risks remotely or only indirectly connected with the actual project. The extent of coverage should be confined to occurrences arising out of acts or omissions on the part of the contractor, his agents or employees and the designated employees of the railroad noted in § 646.109(b)(4) related to the work in progress.

§ 646.115 Negligence of the railroad.

An exclusion should be made with respect to liability for damage resulting from the sole proximate cause of the railroad.

§ 646.117 Real property.

Insurance policies written in conformity with this part shall not cover damage to real property owned by railroads caused by acts or omissions of contractors.

§ 646.119 Exclusion of liabilities under certain laws.

(a) Obligations under the insurance policies discussed herein shall exclude liability under State workmen's compensation laws. State unemployment compensation laws, disability benefit laws and other similar State laws.

(b) The Federal Employers' Liability Act should be specifically excepted so that damages awarded under the Act will be compensable from the insurance written in compliance with this part.

§ 646.121 Exclusion of liability assumed by the railroad under special contracts.

When a railroad assumes liability under contracts or agreements, other than as a common carrier or as a bailee, lessee or operator of property including rolling stock or equipment, such liability shall be excluded from policies written in accordance with these standards. The liability under the policy shall be limited to contracts made as a common carrier.

§ 646.123 Termination of liability.

Liability under these policies shall terminate following notification to the railroad of the acceptance of the work by the State highway department. Excepted from this provision are damages resulting from bodily injury, property damage or loss resulting from the existence or removal of tools, uninstalled equipment and abandoned or unused materials.

§ 646.125 Duplication of coverage.

The policy shall contain a clause providing that the insurance afforded by it shall be primary insurance.

§ 646.127 Form of insurance policy.

The standards established by this part are incorporated in a form of insurance policy which is set forth in Appendix A to this part. Use of this form is required for all projects subject to this part.

APPENDIX A—STANDARD PROVISIONS FOR
GENERAL LIABILITY POLICIES

RAILROAD PROTECTIVE LIABILITY FORM FOR USE
ON STATE OR FEDERAL HIGHWAY PROJECTS
(INCLUDING INSTRUCTIONS FOR PREPARATION
OF POLICIES BY COMPANIES)

General Instructions

1. *Standard language.* This form is expressed in standard language which may not be amended and no part of which may be omitted except (a) as indicated by these instructions, or (b) as indicated in reference notes shown below referring to specific portions of the form, or (c) by an endorsement which states an amendment or exclusion of some provision of the form in accordance with the provisions of a manual rule, the form of which endorsement has been approved, if required, by the supervising authority of the State in which the policy is issued.

2. *Optional sequence and arrangement.* The several parts of the form, viz. "Insuring Agreements," "Exclusions," "Conditions" and "Declarations" may appear in the policy in such sequence as the company may elect and the sequence and arrangement of the several provisions of those parts are also optional with the company.

3. *Descriptive headings—identifying or indexing designations.* The descriptive headings of the parts of the form (as quoted above) and of the major insuring agreements ("Bodily Injury Liability," "Property Damage Liability," etc.) are standard expressions which may not be amended or omitted, but all other identifying or indexing designations (such as "Coverage A," "Defense, Settlement, Supplementary Payments," "Cancellation," etc.), including literal or numerical designations or paragraphs or phrases, may be amended or omitted at the company's option. When such identifying or indexing designations, used for the purpose of reference in the text of the form or any endorsement form applicable thereto, are amended or omitted, descriptive designations shall be substituted therefor.

4. *Additional coverages or companies, explanatory or connective language.* When policies are issued to provide insurance in this form together with insurance covering other risks, the addition of necessary explanatory

or connective language which does not amend the expression of this form is permissible and the introductory language of the "Insuring Agreements" which provides for the issuance of a policy by two companies may be used and, if necessary, paraphrased to permit such policies to be issued by more than two companies.

5. *Declarations—including other risks.* A common set of declarations may be used in those cases where policies in this form are issued with policies covering other risks.

6. *Installment premium payment.* Policies written to provide for payment of premium in installments may provide for lapse or suspension of the policy upon default of payment when due.

7. *Addition of coverage by endorsement.* When insuring agreements and other provisions relating to any particular class of insurance are added to this policy by endorsement, such additional insurance must be expressed in approved standard language relating to the particular class and must be subject to all standard provisions applicable to that class by the expressions of the endorsement or of the policy or of both taken together.

8. *Definition of "standard" and "approved".* "Standard language" or "approved standard language" when used in these instructions means the form and endorsements either prescribed or approved by the insurance supervising authority of the State in which policy forms and endorsements are approved or prescribed. In those States where supervising authorities do not have the authority to approve or prescribe policies, forms and endorsements, the terms mean the forms and endorsements adopted by the companies for use in such States.

9. *Premium statement.* The statement with respect to payment of premium may be amended by an endorsement to make necessary provision with respect to payment of premium, payment of additional premium and return of premium and dividends under the policy.

10. *Special conditions for mutuals, reciprocals, and participating stock companies.* When the policy is issued by a mutual company, a reciprocal association or a participating stock company having special provisions applicable to its membership or policyholders, such provisions, when approved by the supervising authority of the State in which the policy is issued if such approval is required, may be inserted in the policy.

BLANK INDEMNITY COMPANY
BLANK INSURANCE COMPANY

[Railroad Protective Liability
Policy No. -----
(State or Federal Highway
Projects)]¹

¹ Matter in brackets may be included, omitted or amended at the option of the company.

DECLARATIONS

Item 1. Named Insured.....

Address

(No. Street Town [or City] County State)

Item 2. Policy Period:

From to
 12:01 A.M., standard time at the designated
 job site as stated herein.

Item 3. The insurance afforded is only with respect to such of the following coverages as are indicated [in Item 6] by specific premium charge or charges. The limit of the company's liability against such coverage or coverages shall be as stated herein, subject to all the terms of this policy having reference thereto. (A statement may be added that a definite notation may be made in the premium column to show that a particular coverage is not afforded.)

Item 6. Designation
 of the job site and
 description of work

Premium bases

Rates—Coverage A,
 Coverages B and C

Advance premiums—
 Coverage A,
 Coverages B and C

Contract cost..... Per \$100 of cost.....
 Rental cost..... Per \$100 of rental cost.....

[If policy Period more than 1 year:]
 [Premium is payable: On effective date of
 Policy \$----- 1st Anniversary \$----- 2nd An-
 niversary]

[Date and Place of Issue]
 Countersigned [..... 19--., at.....]
 By

- [A. Renewal of policy number.]
- [B. The named insured is a corporation]
- [C. Endorsement serial numbers.]
- [D. Rating plan or premium discount.]

(For policy issued by one company):

[(Name and Location of
 Indemnity Company)]

[A (type of company) insurance company, herein called the company,] agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations made by the named insured and subject to all of the terms of this policy:

(For policy issued by two companies):

[(Name and Location of
 Indemnity Company)]

[and]

[(Name and Location of
 Insurance Company)]

[Each a (type of company) insurance company, herein called the company,] severally agree with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations made by the named insured and subject to

Limits of Liability

Coverages

[Blank Indemnity Company]:

A—Bodily injury liability.....

\$-----each person.

\$-----each occurrence.

[Blank Insurance Company]:

B—Property damage liability; C—Physical damage to property.

\$-----each occurrence.

\$-----aggregate.

Item 4. Name and Address of Contractor..

Item 5. Name and Address of Govern-
 mental Authority for whom the work by
 the Contractor is being performed.....

all of the terms of this policy, provided the Blank Indemnity Company shall be the insurer with respect to coverage..... and no other and the Blank Insurance Company shall be the insurer with respect to coverage..... and no other.

Insuring Agreements

I. Coverage A—bodily injury liability. To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness, or disease, including death at any time resulting therefrom, hereinafter called "bodily injury," either (1) sustained by any person arising out of acts or omissions at the designated job site which are related to or are in connection with the work described in Item 6 of the Declarations, or (2) sustained at the designated job site by the contractor or any employee of the contractor, or by any employee of the governmental authority specified in Item 5 of the Declarations, or by any designated employee of the insured, whether or not arising out of such acts or omissions.

Coverage B—property damage liability. To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of physical injury to or destruction of property, including loss of use of any property due to such injury or destruction, hereinafter called "property damage" arising out of acts or omissions at the designated job site which are related to or are in connection with the work described in Item 6 of the declarations.

Coverage C—physical damage to property. To pay for direct and accidental loss of or damage to rolling stock and their contents,

mechanical construction equipment, or motive power equipment, hereinafter called loss, arising out of acts or omissions at the designated job site which are related to or are in connection with the work described in Item 6 of the declarations; provided such property is owned by the named insured or is leased or entrusted to the named insured under a lease or trust agreement.

II. Definitions. (a) **Insured.** The unqualified word "insured" includes the named insured and also includes any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

(b) **Contractor.** The word "contractor" means the contractor designated in Item 4 of the declarations and includes all subcontractors of said contractor but shall not include the named insured.

(c) **Designated employee of the insured.** The words "designated employee of the insured" mean:

(1) Any supervisory employee of the insured at the job site.

(2) Any employee of the insured while operating, attached to or engaged on work trains or other railroad equipment at the job site which are assigned exclusively to the contractor, or

(3) Any employee of the insured not within (1) or (2) who is specifically loaned or assigned to the work of the contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the contractor or by governmental authority.

(d) **Contract.** The word "contract" means any contract or agreement to carry a person or property for a consideration or any lease, trust or interchange contract or agreement respecting motive power, rolling stock or mechanical construction equipment.

III. Defense, settlement, supplementary payments. With respect to such insurance as is afforded by this policy under coverages A and B, the company shall:

(a) Defend any suit against the insured alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent, but the company may make such investigation and settlement of any claim or suit as it deems expedient;

(b) Pay, in addition to the applicable limits of liability:

(1) All expenses incurred by the company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;

(2) Premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy,

but without obligation to apply for or furnish any such bonds;

(3) Expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of the occurrence;

(4) All reasonable expenses, other than loss of earnings, incurred by the insured at the company's request.

IV. Policy period, territory. This policy applies only to occurrences and losses during the policy period and within the United States of America, its territories or possessions, or Canada.

Exclusions

This policy does not apply:

(a) To liability assumed by the insured under any contract or agreement except a contract as defined herein;

(b) To bodily injury or property damage caused intentionally by or at the direction of the insured;

(c) To bodily injury, property damage or loss which occurs after notification to the named insured of the acceptance of the work by the governmental authority, other than bodily injury, property damage or loss resulting from the existence or removal of tools, uninstalled equipment and abandoned or unused materials;

(d) Under Coverages A(1), B and C to bodily injury, property damage or loss, the sole proximate cause of which is an act or omission of any insured other than acts or omissions of any designated employee of any insured;

(e) Under Coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law; provided that the Federal Employers' Liability Act, U.S. Code (1946) Title 45, sections 51-60, as amended, shall for the purposes of this insurance be deemed not to be any similar law;

(f) Under Coverage B, to injury to or destruction of property (1) owned by the named insured or (2) leased or entrusted to the named insured under a lease or trust agreement.

(g) 1. Under any Liability Coverage, to injury, sickness, disease, death or destruction:

(a) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) Resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the

insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, of any agency thereof, with any person or organization.

2. Under any Medical Payments Coverage, or under any Supplementary-Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

3. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

(a) The nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(b) The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

(c) The injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possession or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

4. As used in this exclusion:

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear material" means source material, special nuclear material or byproduct material;

"Source material," "special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"Waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) below;

"Nuclear facility" means:

(a) Any nuclear reactor;

(b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

(c) Any equipment or device used for the processing, fabricating or alloying of special

nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material; with respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

(h) Under Coverage C, to loss due to nuclear reaction, nuclear radiation or radioactive contamination, or to any act or condition incident to any of the foregoing.

Conditions

[The conditions, except conditions 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, apply to all coverages. Conditions 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 apply only to the coverage noted thereunder.]

1. *Premium.* The premium bases and rates for the hazards described in the declarations are stated therein. Premium bases and rates for hazards not so described are those applicable in accordance with the manuals in use by the company.

The term "contract cost" means the total cost of all work described in Item 6 of the declarations.

The term "rental cost" means the total cost to the contractor for rental of work trains or other railroad equipment, including the remuneration of all employees of the insured while operating, attached to or engaged thereon.

The advance premium stated in the declarations is an estimated premium only. Upon termination of this policy the earned premium shall be computed in accordance with the company's rules, rates, rating plans, premiums and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the company shall look to the contractor specified in the declarations for any such excess; if less, the company shall return to the said contractor the unearned portion paid.

In no event shall payment of premium be an obligation of the named insured.

2. *Inspection.* The named insured shall make available to the company records of information relating to the subject matter of this insurance.

The company shall be permitted to inspect all operations in connection with the work described in Item 6 of the declarations.

3. Limits of liability—coverage A. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence; the limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of the company's liability for all such damage arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

4. Limits of liability—coverages B and C. The limit of liability under coverages B and C stated in the declarations as applicable to "each occurrence" is the total limit of the company's liability for all damages and all loss under coverages B and C combined arising out of physical injury to, destruction or loss of all property of one or more persons or organizations, including the loss of use of any property due to such injury or destruction under coverage B, as the result of any one occurrence.

Subject to the above provision respecting "each occurrence," the limit of liability under coverages B and C stated in the declaration as "aggregate" is the total limit of the company's liability for all damages and all loss under coverages B and C combined arising out of physical injury to, destruction or loss of property, including the loss of use of any property due to such injury or destruction under coverage B.

Under coverage C, the limit of the company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof the actual cash value of such part, at time of loss, not what it would then cost to repair or replace the property or such part thereof with other of like kind and quality.

5. Severability of interests—coverages A and B. The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

6. Notice. In the event of an occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. If claim is made or suit is brought against the insured, he shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

7. Assistance and cooperation of the insured—coverages A and B. The insured shall cooperate with the company and, upon the company's request, attend hearings and trials and assist in making settlements,

securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

8. Action against company—coverages A and B. No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

9. Action against company—coverage C. No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms on this policy nor until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.

10. Insured's duties in event of loss—coverage C. In the event of loss the insured shall:

(a) Protect the property, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request;

(b) File with the company, as soon as practicable after loss, his sworn proof of loss in such form and including such information as the company may reasonably require and shall, upon the company's request, exhibit the damaged property.

11. Appraisal—coverage C. If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after the proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

12. *Payment of loss—coverage C.* The company may pay for the loss in money but there shall be no abandonment of the damaged property to the company.

13. *No benefit to bailee—coverage C.* The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee, other than the named insured, liable for loss to the property.

14. *Subrogation.* In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

15. *Application of insurance.* The insurance afforded by this policy is primary insurance.

16. *Three year policy.* A policy period of 3 years is comprised of 3 consecutive annual periods. Computation and adjustment of earned premium shall be made at the end of each annual period. Aggregate limits of liability as stated in this policy shall apply separately to each annual period.

17. *Changes.* Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy [signed by _____ (here insert titles of authorized company officials or representatives); provided, however, changes may be made in the written portion of the declaration by _____ (here insert titles of authorized company representatives) when initialed by such _____ (here insert titles of authorized company representatives) or by endorsement issued to form a part of this policy signed by such _____ (here insert titles of authorized company representatives)].

18. *Assignment.* Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon.

19. *Cancellation.* This policy may be canceled by the named insured by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the named insured, contractor and governmental authority at the respective addresses shown in this policy written notice stating when not less than 30 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period.

Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

20. *Declarations.* By acceptance of this policy the named insured agrees that such statement in the declarations as are made by him are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

(For policy issued by one company):

[In witness whereof, the Blank Indemnity Company has caused this policy to be signed by its president and a secretary at _____ and countersigned on the declarations page by a duly authorized agent of the company.]

[(Facsimile of signature),
President.]

[(Facsimile of signature),
Secretary.]

(For policy issued by two companies):

[In witness whereof, the Blank Indemnity Company has caused this policy with respect to coverages _____ and such other parts of the policy as are applicable thereto, to be signed by its president and a secretary at _____, and countersigned on the declarations page by a duly authorized agent of the company.]

[(Facsimile of signature),
President.]

[(Facsimile of signature),
Secretary.]

[In witness whereof, the Blank Insurance Company has caused this policy, with respect to coverages _____ and such other parts of the policy as are applicable thereto, to be signed by its president and a secretary at _____, and countersigned on the declarations page by a duly authorized agent of the company.]

[(Facsimile of signature),
President.]

[(Facsimile of signature),
Secretary.]

[39 FR 36474, Oct. 10, 1974; 40 FR 7647, Feb. 21, 1975]

PARTS 647—649..[RESERVED]

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS¹

Subpart A—Hydraulic Design of Highway Encroachment on Flood Plains

Sec.

- 650.101 Purpose.
- 650.103 Policy.
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- 650.201 Purpose.
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Subpart E—Water Supply and Sewage Treatment at Safety Rest Areas

- 650.501 Purpose.
- 650.502 Applicability.
- 650.503 Definitions.
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- 650.505 Site selection.
- 650.506 Water supply facilities.
- 650.507 Sewage treatment facilities.
- 650.508 Federal-aid participation in construction costs.

AUTHORITY: 23 U.S.C. 109(h), 116(d), 144, 315, 319(a), 319(b); 82 Stat. 829, sec. 26; sec. 6, 49 U.S.C. 1655; delegation of authority 49 CFR 1.48(b).

Subpart A—Hydraulic Design of Highway Encroachment on Flood Plains

SOURCE: 39 FR 36331, Oct. 9, 1974, unless otherwise noted.

§ 650.101 Purpose.

The purpose of this subpart is to prescribe policies and procedures for hydraulic designs for highway projects con-

structed with Federal-aid funds and projects under the direct supervision of the Federal Highway Administration.

§ 650.103 Policy.

(a) It is the policy of the Federal Highway Administration to encourage a broad and unified effort to prevent uneconomic, hazardous or unnecessary use and development of the Nation's flood plains, and in particular to lessen the risk of flood losses in connection with federally-financed improvements; and to comply with the "Flood Hazard Evaluation Guidelines for Federal Executive Agencies," May 1972, published by the Water Resources Council.

(b) It is the policy of the Federal Highway Administration that, where practicable, highway locations shall avoid areas subject to flooding.

§ 650.105 Definitions.

(a) The term "basic flood" shall mean the 100-year flood.

(b) The term "conveyance of the basic flood" shall mean the ability to accommodate passage of the 100-year flood.

(1) Conveyance may be through structures or both through structures and over the highway.

(2) Conveyance along a highway may include inundation of the highway.

(c) The term "design flood" shall mean the peak discharge, volume (if appropriate), and stage or wave crest elevation of the flood associated with the recurrence interval selected for the design of a highway encroachment on a flood plain. By definition, the highway will not be subjected to inundation from the stage of design flood.

(d) The term "flood plain" shall mean (1) the valley area adjacent to a stream or river subject to overflow, (2) an area adjacent to a lake, an estuary, an ocean, or similar body of water subject to high tides, surges, tsunamis, or any combination of these; or (3) an area where the path of the next flood flow is unpredictable, as in a debris cone, an alluvial cone or fan, a debris slope, or a talus.

(e) The term "encroachment" shall mean a highway and/or appurtenant feature within the limits of a flood plain.

§ 650.107 Design standards.

(a) Where encroachment on a flood plain is necessary, an evaluation, using the basic flood, shall be made of the flood hazard to the highway, and the effect of the proposed highway on the flood hazard to other property, stream

¹ Retitled at 39 FR 29174, Aug. 14, 1974.

stability, and the stream and flood plain environment.

(b) All highways that encroach on flood plains, bodies of water or streams shall be designed to permit conveyance of the basic flood without causing significant damage to the highway, the stream, body of water, or other property.

(c) At each location where the highway will encroach upon a flood plain, project plans shall show (1) the magnitude, frequency, and water surface elevations for the design flood and the basic flood, if different from the design flood, and (2) the magnitude, water surface elevations and date of occurrence of the flood of record, if greater than the basic flood.

(d) The effects of existing flood control channels, levees, and reservoirs shall be considered in estimating the peak discharge and stage for all floods considered in the design.

(e) All highways on the Interstate System that encroach on flood plains shall be designed to avoid inundation of the highway from floods at least as great as the 50-year flood.

(f) Buildings, waste treatment facilities and other high cost installations or potential major source of pollution for highway rest areas shall be located outside the flood plain or flood proofed against damage from the basic flood.

(g) Where highway fills are to be used to form dams or levees, appropriate permits, with regard to water rights, impoundments, and diversions shall be obtained. Prior to authorization by the Division Engineer, the hydrologic, hydraulic, and structural design of the fill and appurtenant spillways, shall have the approval of the State or Federal agency responsible for the safety of dams or like structures within the State.

§ 650.109 Studies and reports.

(a) Reports shall be prepared by the State highway department or its agent showing (1) hydrologic and hydraulic data and design computations, (2) the analysis of the highway effect on stream stability, and (3) the favorable or adverse effects on the stream environment.

(b) The reports and design computations shall be retained in the highway agency's permanent design files for the project, and upon request made available to the Federal Highway Administration for review. Copies of these reports shall accompany preliminary plans which re-

quire regional or Washington office approval.

(c) The reports shall be commensurate with the importance of the structure and the risk to life and property. Less comprehensive reports are appropriate for encroachments on minor streams and at locations where the risk of property damage or loss of the highway is small.

§ 650.111 Federal participation in construction costs.

Federal-aid participation in cooperative projects using the highway fill to provide for flood control or water resource development will be limited to the pro rata share of the estimated cost to construct the highway only.

Subpart B—Erosion and Sediment Control on Highway Construction Projects

SOURCE: 39 FR 36332, Oct. 9, 1974, unless otherwise noted.

§ 650.201 Purpose.

The purpose of this subpart is to prescribe policies and procedures for the control of erosion, abatement of water pollution and prevention of damage by sediment deposition from Federal-aid highway projections and projects under the direct control of the Federal Highway Highway Administration.

§ 650.203 Policy.

It is the policy of the Federal Highway Administration (FHWA) that Federal-aid highways and highways constructed under the direct supervision of FHWA shall be located, designed, constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and ground water resources.

§ 650.205 Definitions.

(a) Erosion control measures are installations used to inhibit dislodging of soil particles by water or wind.

(b) Sediment control measures are installations used to inhibit dislodging of remove settleable sediments from surface runoff.

(c) Permanent erosion and sediment control measures are installations which remain in place and in service on completion of the construction project.

(d) Temporary erosion or sediment control measures are installations used on an interim basis during construction.

(e) Pollutants are substances, including sediment, which cause deterioration of water quality when added to surface or ground waters in sufficient quantity.

§ 650.207 Plans, specifications and estimates.

(a) Emphasis shall be placed on erosion control in the preparation of plans, specifications and estimates.

(b) All reasonable steps shall be taken to insure that highway project designs for the control of erosion and sedimentation and the protection of water quality comply with applicable standards and regulations of other agencies.

§ 650.209 Construction.

(a) Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices.

(b) Temporary erosion and sediment control measures shall be coordinated with permanent measures to assure economical, effective and continuous control throughout the construction phase. Temporary measures shall not be constructed for expediency in lieu of permanent measures specified in the contract.

(c) Erosion and sediment control measures shall be adequately maintained to perform their intended function during construction of the project.

(d) Erosion and sediment control measures necessary because of contractor negligence, carelessness or failure to install contract measures as scheduled shall be installed at no cost to Federal-aid funds.

(e) Pollutants used during highway construction or operation and material from sediment traps shall not be stock-piled or disposed of in a manner which makes them susceptible to being washed into any watercourse by runoff or high water. No pollutants shall be deposited or disposed of in watercourses.

Subpart C—National Bridge Inspection Standards

SOURCE: 36 FR 7851, Apr. 27, 1971, unless otherwise noted. Redesignated at 39 FR 10430, Mar. 20, 1974.

§ 650.301 Application of standards.

The National Bridge Inspection Standards in this part apply to all structures defined as bridges located on any of the Federal-aid highway systems. In accordance with Federal-Aid Coding Manual Standards and the AASHTO (American

Association of State Highway and Transportation Officials) Highway Definitions Manual, a "bridge" is defined as a structure including supports erected over a depression or an obstruction, as water, highway, or railway and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines or arches, or extreme ends of openings for multiple boxes; it may include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

[36 FR 7851, Apr. 27, 1971. Redesignated at 39 FR 10430, Mar. 20, 1974 and amended at 39 FR 29589, Aug. 16, 1974]

§ 650.303 Inspection procedures.

(a) Each highway department shall include a bridge inspection organization capable of performing inspections and preparing reports and determination of ratings in accordance with the provisions of the AASHTO Manual¹ and the standards contained herein.

(b) Bridge inspectors shall meet the minimum qualifications stated in § 650.307.

(c) Each structure required to be inspected under the Standards shall be rated as to its safe load carrying capacity in accordance with section 4 of the AASHTO Manual. If it is determined under this rating procedure that the maximum legal load under State law exceeds the load permitted under the Operating Rating Stress Level, the bridge must be posted in conformity with the AASHTO Manual or in accordance with State law.

¹ The "AASHTO Manual" referred to in this part is the "Manual for Maintenance Inspection of Bridges 1974" published by the American Association of State Highway and Transportation Officials. A copy of the Manual may be examined during normal business hours at the office of each Division Engineer of the Federal Highway Administration, at the office of each Regional Federal Highway Administrator, and at the Washington headquarters of the Federal Highway Administration. The addresses of those document inspection facilities are set forth in Appendix D to Part 7 of the regulations of the Office of the Secretary (49 CFR Part 7). In addition, a copy of the Manual may be secured upon payment in advance of a fee of \$1.50 plus postage by writing to the American Association of State Highway and Transportation Officials, 341 National Press Building, Washington, D.C. 20004.

(d) Inspection records and bridge inventories shall be prepared and maintained in accordance with the Standards.

[36 FR 7851, Apr. 27, 1971. Redesignated at 39 FR 10430, Mar. 20, 1974 and amended at 39 FR 29590, Aug. 16, 1974]

§ 650.305 Frequency of inspections.

(a) Each bridge is to be inspected at regular intervals not to exceed 2 years in accordance with section 2.3 of the AASHTO Manual.

(b) The depth and frequency to which bridges are to be inspected will depend on such factors as age, traffic characteristics, state of maintenance, and known deficiencies. The evaluation of these factors will be the responsibility of the individual in charge of the inspection program.

[36 FR 7851, Apr. 27, 1971. Redesignated at 39 FR 10430, Mar. 20, 1974 and amended at 39 FR 29590, Aug. 16, 1974]

§ 650.307 Qualifications of personnel.

(a) The individual in charge of the organizational unit that has been delegated the responsibilities for bridge inspection, reporting, and inventory shall possess the following minimum qualifications:

(1) Be a registered professional engineer; or

(2) Be qualified for registration as a professional engineer under the laws of the State; or

(3) Have a minimum of 10 years' experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the "Bridge Inspector's Training Manual," which has been developed by a joint Federal-State task force and is published by the Department of Transportation.*

(b) An individual in charge of a bridge inspection team shall possess the following minimum qualifications:

(1) Have the qualifications specified in paragraph (a) of this section; or

(2) Have a minimum of 5 years' experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the "Bridge Inspector's Training Manual," which has been developed

* The "Bridge Inspector's Training Manual" may be purchased (at a cost of \$2.50) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

by a joint Federal-State task force and is published by the Department of Transportation.

§ 650.309 Inspection report.

The findings and results of bridge inspections shall be recorded on standard forms. The data required to complete the forms and the functions which must be performed to compile the data are contained in section 3 of the AASHTO Manual.

[39 FR 29590, Aug. 16, 1974]

§ 650.311 Inventory.

(a) Each State shall prepare and maintain an inventory of all bridge structures subject to the Standards. If a State wishes to expand the inventory to include structures not subject to the Standards, the bridges which are subject to the Standards shall be separately identifiable in the records.

(b) Under the Standards certain structure inventory and appraisal data must be collected and retained within the various departments of the State organization for collection by the Federal Highway Administration as needed. A tabulation of these required data is contained in the structure inventory and appraisal sheet distributed by the Federal Highway Administration along with its Coding Guide in July of 1972. Annual reporting procedures will be developed by the Federal Highway Administration in consultation with the State highway departments.

(c) The inventory shall be completed for all bridges on any Federal-aid highway system over waterways and other topographical barriers as required by section 204(a) of the Federal-Aid Highway Act of 1970 (23 U.S.C. 144) no later than July 1, 1972. All other bridges on the Federal-aid system, such as grade separations and railroad crossings, must be completely inventoried by July 1, 1973. Newly completed structures or any modification of existing structures which would alter previously-recorded data on the inventory forms shall be entered in the State's records within 90 days.

[36 FR 7851, Apr. 27, 1971. Redesignated at 39 FR 10430, Mar. 20, 1974 and amended at 39 FR 37194, Oct. 18, 1974]

Subpart D—Special Bridge Replacement Program

SOURCE: 39 FR 29174, Aug. 14, 1974, unless otherwise noted.

§ 650.401 Scope and purpose.

(a) *Scope.* The rules in this subpart prescribe policies and outline procedures followed in administering the Special Bridge Replacement Program.

(b) *Purpose.* The purpose of the Special Bridge Replacement Program is to implement 23 U.S.C. 144. In 23 U.S.C. 144, Congress found it in the national interest to initiate a program enabling the States to replace important bridges over waterways and other topographical barriers when those bridges have become unsafe because of structural deficiencies, physical deterioration, or functional obsolescence.

§ 650.402 Definition of terms.

As used in this subpart—

(a) "Bridge" means a structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may include multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening.

(b) "Sufficiency rating" is the numerical rating of a bridge based on its structural adequacy, safety, serviceability, essentiality for public use, and age.

(c) "Topographical barrier" includes, but is not limited to, geographical features such as ravines, gorges, sloughs, valleys and railroad tracks.

(d) "Waterway" includes, but is not limited to, oceans, gulfs, bays, rivers, streams, creeks, canals, lakes, ponds, swamps, and flood plains.

§ 650.403 Eligible projects.

(a) *General.* Bridges which span waterways and other topographical barriers and are on any of the Federal-aid highway systems are eligible for replacement under the Special Bridge Replacement Program. The replacement structure must meet the current geometric and construction standards required for the type and volume of traffic which the facility will carry over its design life.

(b) *Types of Projects Which are Eligible.* The following types of work are eligible for participation in the Special Bridge Replacement Program:

(1) *Total replacement.* Total replacement of a structurally inadequate or functionally obsolete bridge at or very close to its existing location.

(2) *Complete relocation.* Complete relocation of a structurally inadequate or functionally obsolete bridge with a new facility constructed in the same general traffic corridor. A nominal amount of approaches, sufficient to connect the new facility to the existing roadway or to return the gradeline to an attainable touchdown point in accordance with good design practice, is also eligible.

(3) *Partial replacement.* When the substructure of a bridge is structurally adequate to safely support a new superstructure conforming to current geometric and structural standards, the necessary substructure modifications and the superstructure construction are eligible for Federal-aid participation under the Special Bridge Replacement Program.

(c) *Ineligible Work.* Except as otherwise prescribed by the Administrator, the following costs are not eligible under the Special Bridge Replacement Program:

(1) Costs of right-of-way, utility relocation or adjustments, or extended approaches.

(2) Costs of long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when constructed beyond the attainable touchdown point. However, Federal-aid highway funds authorized for other programs may participate in those costs.

§ 650.404 Application for bridge replacement.

(a) A State participates in the Special Bridge Replacement Program by submitting applications for replacement of all deficient bridges located in that State that it desires to have considered as candidates for replacement under the program. Applications are submitted to the Division Engineer of the Federal Highway Administration. If a deficient bridge eligible for replacement is owned by a city, a county, or any other units of local government and the local government desires to replace the bridge, the State may submit an application for replacement of that bridge on behalf of the local government. An application must include a completed Structure Inventory and Appraisal Sheet pertaining to the

bridge. Completion of a Structure Inventory and Appraisal Sheet for a bridge is prescribed in §§ 650.309 and 650.311 of the National Bridge Inspection Standards, §§ 650.309, 650.311.

(b) At any time after it has submitted its initial applications, a State may apply for replacement of additional deficient bridges by submitting an application pertaining to each such bridge in accordance with this section.

(c) Revised data relating to bridges which a State has designated as candidates for replacement shall be submitted at such times as the Federal Highway Administration may request.

§ 650.405 Evaluation and disposition of applications.

(a) *Sufficiency rating of candidate bridges.* Upon receipt and evaluation of applications, the Federal Highway Administration will assign a sufficiency rating to each bridge. The sufficiency rating will be used as a basis for establishing priority for replacement of bridges. The rating decreases in accordance with the following schedule:

(1) Structural adequacy and safety	0-50
(2) Serviceability and functional obsolescence	0-25
(3) Essentiality for public use	0-20
(4) Age	0-5

The lower the rating, the higher the priority for replacement.

(b) *Selection of bridges for inclusion in State program.* After evaluation of applications and assignment of sufficiency ratings, the Federal Highway Administration will provide the State with a selection list of bridges within the State that have the highest priority for replacement. From that list or from previously furnished selection lists, the State may select bridge replacement projects for implementation.

§ 650.406 Procedures for bridge replacement projects.

(a) *Submission and approval of projects.* When a State has made its selection of bridges to be replaced, it shall prepare and submit the program documents to the Division Engineer in accordance with usual procedures relating to Federal-aid highway programs. The Federal Highway Administration will review the program documents and will advise the State when a project is approved or conditionally approved.

(b) *Completion of Projects.* (1) Each approved project will be designed, constructed, inspected for acceptance, and maintained in the same manner as other Federal-aid projects on the system on which the project is located.

(2) Whenever a deficient bridge is replaced by a new bridge under the Special Bridge Replacement Program the deficient bridge shall be closed to vehicular traffic at the earliest date possible following the opening of the replacement bridge.

§ 650.407 Funding.

(a) Funds authorized for carrying out the Special Bridge Replacement Program are available for obligation at the beginning of the fiscal year for which authorized and remain available until expended. Under 23 U.S.C. 144 the funds are allocated to the States on the basis of comparative bridge replacement needs. Funds allocated to a State and not obligated within a reasonable period by that State may, after appropriate notification, be withdrawn for redistribution to other States.

(b) Obligation of funds is subject to obligation control procedures in effect at the time of obligation.

(c) The Federal share payable on account of any project carried out under 23 U.S.C. 144 shall not exceed 75 percent of the eligible cost thereof.

§ 650.408 Reporting.

Under 23 U.S.C. 144, the Secretary reports annually to the Congress on projects approved under the Special Bridge Replacement Program together with any recommendations he may have for further improvements in the program.

Subpart E—Water Supply and Sewage Treatment at Safety Rest Areas

SOURCE: 39 FR 34399, Sept. 25, 1974, unless otherwise noted.

§ 650.501 Purpose.

The purpose of this regulation is to prescribe policies and procedures for providing safe and adequate water supply and sewage treatment facilities at safety rest areas constructed with Federal-aid funds.

§ 650.502 Applicability.

The provisions of this regulation shall apply to safety rest areas on the Federal-aid systems with existing or proposed

drinking water supply and sewage treatment facilities.

§ 650.503 Definitions.

(a) A safety rest area is an off-road-way area with parking facilities provided for motorists to stop and rest for short periods. Drinking water, toilets, tables and benches, telephones and other facilities may be provided for the comfort and convenience of travelers.

(b) Drinking water standards are the standards for assessing the physical, chemical, biological and radiological characteristics of water for drinking.

(c) Water quality standards are standards established for purposes of maintaining or improving water quality in bodies of water and streams.

(d) A sanitary survey is a visual inspection of areas adjacent to a spring or well supply to insure that possible sources of contamination do not threaten the potability of the supply.

(e) Pub. L. 90-500 refers to "Federal Water Pollution Control Act Amendments of 1972"

(f) Sewage is the liquid wastes conducted away from rest area comfort and convenience facilities.

(g) Sewerage system is the physical system that collects, conveys, and treats the sewage.

§ 650.504 Policy.

(a) It is the policy of the Federal Highway Administration that drinking water supply facilities shall be designed, constructed and maintained to meet current and impending drinking water standards.

(b) It is the policy of the Federal Highway Administration that onsite sewage treatment facilities shall be designed, constructed and operated to meet the 1977 effluent limitations pursuant to Pub. L. 92-500 or State standards, whichever is more restrictive, and water quality standards for the receiving waters.

§ 650.505 Site selection.

(a) The availability of an adequate water supply in both quantity and quality and the feasibility of providing for adequate and safe disposal of sewage shall be ascertained, insofar as possible, prior to the selection of the safety rest area location.

(b) Water quality standards that the treated sewage effluent must meet shall

be identified and considered in the site selection phase.

§ 650.506 Water supply facilities.

(a) Where a public water supply system is to be utilized, the supplier's ability to maintain a potable and adequate water supply shall be ascertained.

(1) If the public supply cannot meet the drinking water quality standards required at the rest area, necessary water treatment shall be accomplished at the site, or a different source shall be provided.

(b) Regardless of source, the safety rest area water supply shall be monitored on a regular basis in accordance with State regulatory agency standards.

§ 650.507 Sewage treatment facilities.

(a) All necessary permits for discharging the sewage effluent, including the NPDES permit, shall be obtained prior to approval of PS&E and authorization to advertise for bids. Delays will be experienced in obtaining NPDES permits as this System is implemented. Until such time as permit applications can be handled expeditiously, timely application for the NPDES permit shall be evidence of compliance with the permit requirement.

(b) Where a public sanitary sewerage system is to be utilized, the capability of the facility to adequately treat the added sewage load should be ascertained prior to selection of this means of disposal.

§ 650.508 Federal-aid participation in construction costs.

(a) New Rest Areas. (1) Federal-aid projects may be approved for the construction of water supply and sewage treatment facilities that will meet the requirements of § 650.504(a) and (b).

(2) Federal-aid participation in the cost to connect to a public facility may include participation in the highway agency's share of the cost to construct, expand or improve the public facility to assure adequate water supply or sewage treatment. Participation in amounts expended for capital improvements to the public facility will be limited to the lesser of:

(i) The appropriate pro rata share of the highway project's responsibility for the improvements;

(ii) The present worth of the capital investment, maintenance and operation costs for an onsite facility; however,

participation may be authorized for additional costs that may be incurred because of environmental reasons or resource conservation.

(b) Existing Rest Areas. (1) Quantity Requirements.

(i) Federal-aid Interstate (FAI) funds may be used to increase the capacity of deficient Interstate rest area water supply and sewerage systems to accommodate anticipated usage for the design year of the original rest area construction based on the following criteria:

<i>FAI construction authorized:</i>	<i>Design year</i>
Prior to Jan. 1, 1964----	1975.
On or after Jan. 1, 1964 and before Jan. 1, 1970 -----	20 years after authorization.
After Jan. 1, 1970-----	Not eligible for FAI participation.

(ii) FAI funds may be used to construct, expand, or improve water supply and sewerage systems at existing Interstate rest areas, where such facilities have not previously been constructed with FAI funds, for anticipated usage 20 years after authorization of the new construction.

(iii) Federal-aid funds other than FAI may be used to expand or improve water supply and sewerage systems at existing rest areas without regard for the design year for the original construction.

(2) Quality Requirements;

(i) The use of Federal-aid funds may be approved to improve or replace existing water supply systems which fail to meet existing or new and more stringent drinking water quality standards imposed pursuant to Federal or State law.

(ii) Where safety rest area sewage effluent quality does not meet the 1977 effluent limitations, Federal-aid participation in sewage treatment facility replacement or improvements to meet those standards may be authorized for projects where the construction of these facilities was authorized prior to the date of this regulation, subject to the following:

(A) Evidence of failure of existing treatment facility to meet effluent standards established by field investigation and appropriate testing of influent and effluent samples.

(B) Failure to meet effluent standards is not a result of inadequate maintenance or plant operation. If plant operation is deficient, such steps as increased operator training or certification should be accomplished.

(C) Receipt of an engineering report describing the characteristics, volumes, and rates of sewage flows. The report should also contain design computations and a discussion of modifications required to meet the standards.

(iii) Highway Planning funds may be used to establish the need for upgrading existing water supply and sewage treatment facilities at safety rest areas to meet new quality standards.

PART 651— [RESERVED]

PART 652—BIKEWAYS AND WALKWAYS IN CONJUNCTION WITH FEDERAL AND FEDERAL-AID HIGHWAYS

Sec.

- 652.1. Purpose.
- 652.2. Definitions.
- 652.3. Policy.
- 652.4. Federal participation.
- 652.5. Planning.
- 652.6. Programming.

AUTHORITY: 23 U.S.C. 106, 217 and 315.

SOURCE: 39 FR 10581, Mar. 21, 1974, unless otherwise noted.

§ 652.1 Purpose.

The purpose of this subsection is to provide policies and procedures relating to bicycle and pedestrian facilities on Federal-aid system highways and Federal participation in the cost of these facilities.

§ 652.2 Definitions.

(a) "Bicycle" means a two-wheeled vehicle propelled solely by human power.

(b) "Bikeway" means a continuous way designated for use of bicycles and other vehicles propelled by human power.

(c) "Bicycle trail" means a bikeway separated from the through lanes for motor vehicles by space or barrier.

(d) "Shared roadway" means a roadway which may be shared by motor vehicles and bicycles, or a portion of which is reserved for use by bicycles and other nonmotorized vehicles.

(e) "Pedestrian walkway" or "walkway" means a continuous way designated for pedestrians and separated from the through lanes for motor vehicles by space or barrier.

(f) "Highway construction project" means a project financed in whole or in part with Federal-aid or Federal funds for the construction, reconstruction or improvement of a highway or a portion thereof, including bridges and tunnels.

(g) "Independent bikeway or walkway construction project" means a highway construction project to provide bicycle or pedestrian facilities, in contrast with a project whose primary purpose is to serve motorized vehicles.

(h) "Snowmobile" means a motorized vehicle solely designed to operate on snow or ice.

[39 FR 10581, Mar. 21, 1974 as amended at 39 FR 12732, Apr. 8, 1974]

§ 652.3 Policy.

The provision of bicycle and pedestrian facilities on Federal-aid highway projects is encouraged. The construction of bicycle facilities and walkways may be approved as either incidental features of highway construction projects primarily for motor vehicular traffic or as independent bikeway or walkway construction projects where all of the following conditions are satisfied:

(a) The facility will not impair the safety of the motorist, bicyclist or pedestrian.

(b) The facility will be accessible to users or will form a segment located and designed pursuant to an overall plan.

(c) A public agency has formally agreed to:

(1) Operate and maintain the facility.

(2) Ban all motorized vehicles other than maintenance vehicles and, when snow conditions and State or local regulations permit, snowmobiles.

(d) It is reasonably expected that the facility will have sufficient use in relation to cost to justify its construction and maintenance.

§ 652.4 Federal participation.

(a) Bicycle and pedestrian facilities may be constructed as incidental features of highway construction projects where the bikeway or walkway is to be constructed concurrently with the improvement for motor vehicular traffic and the bikeway or walkway will be within the normal right-of-way of the highway, including land acquired under 23 U.S.C. 135 and 319 (Traffic Improvements and Scenic Enhancement Programs). Projects constructed as incidental features or larger highway construction projects may be financed with the same types of Federal-aid funds as the basic highway project, including Interstate projects, and are not subject to the funding limitations for independent bikeway or walkway projects.

(b) Independent bikeway or walkway construction projects may be financed with all types of Federal-aid funds except Interstate, provided the total amount obligated for all such projects in any one State in any one fiscal year does not exceed \$2 million for Federal-aid funds or a lesser amount apportioned by the Federal Highway Administrator to avoid exceeding the annual \$40 million cost limitation on these projects for all States in a fiscal year. Independent bikeway or walkway projects may be constructed on completed sections of Federal-aid highways. Projects may include the acquisition of land outside the right-of-way, provided the facility will accommodate traffic which would have normally used a Federal-aid highway route, disregarding any legal prohibitions on the use of the route by cyclists or pedestrians.

(c) The Federal share payable for bicycle or pedestrian facilities on a Federal-aid system shall be as provided in 23 U.S.C. 120 for such systems, except that independent bikeway or walkway construction projects on the Interstate System shall be financed as projects on the primary system or urban extensions thereof.

(d) Federal participation in eligible bicycle and pedestrian facilities may include:

(1) The costs of grading, drainage, paving, barriers, landscaping, and structures necessary to accommodate the number and type of users of the facility.

(2) The costs of supplementary facilities such as shelters, parking facilities, bicycle storage facilities and comfort stations.

(3) The costs of traffic control devices including signs, signals and pavement markings.

(4) The costs of fixed source lighting where its use is appropriate.

(5) The costs of curb-cut ramps on new and existing facilities, including those for the physically handicapped.

(6) The costs of right-of-way (land acquisition and relocation assistance) on independent bikeway construction projects.

(7) The costs of walks, barriers and additional widths and lengths on bridges necessary for bikeways and pedestrian walkways for route continuity.

(8) The costs of bikeway and walkway grade separations where:

(i) Vehicular speeds and crossing volumes constitute a hazard of such magnitude as to justify the cost of the structure and the bikeway or walkway cannot be rerouted to another structure, or;

(ii) The separation is necessary because the highway has complete control of access.

§ 652.5 Planning.

Bikeways should be planned as parts of bicycle transportation systems. Where planning is conducted under 23 U.S.C. 134(a), consideration should be given to including bicycle transportation. Funds provided by 23 U.S.C. 307(c) may be used to plan bikeways. Consultation with organized groups of bicyclists is certain to prove valuable in the planning and design of bikeway projects, and such counsel should be actively sought.

§ 652.6 Programming.

(a) Obligation of 1974 fiscal year funds may commence immediately on a first come, first served basis subject to the funding limitations set forth in § 652.4b.

(b) For FY 1975 and 1976, each State shall submit a program covering all independent bikeway or walkway construction projects not later than May 1, 1974, in the case of FY 1975 funds, and May 1, 1975, in the case of FY 1976 funds, identifying proposed projects and the source or sources of funds from which such projects are to be financed. Its proposed obligations shall not exceed \$2 million in Federal-aid funds for each fiscal year. In the event the aggregate sum of all Federal and Federal-aid funds proposed to be obligated by all States and Federal agencies exceeds \$40 million for either fiscal year 1975 or 1976, funds for obligation will be allocated to the States by the Federal Highway Administrator in relation to the apportionment received by the applicant States under 23 U.S.C., section 104(b) (1), (2), (3) and (6).

PARTS 653—654 [RESERVED]

PART 655—TRAFFIC OPERATIONS

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- 655.102 Definitions.
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- 655.609 Signals.
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Subpart A—Urban Traffic Operations Program To Increase Capacity and Safety (TOPICS)

AUTHORITY: 23 U.S.C. 135; 23 U.S.C. 101(a); 23 U.S.C. 315; and 49 CFR 1.48(b).

SOURCE: 39 FR 26414, July 19, 1974, unless otherwise noted.

§ 655.101 Purpose.

These regulations prescribe policies and procedures of the Federal Highway Administration (FHWA) relating to the expenditure of Federal-aid highway funds in urban areas for the continuation of the established urban traffic operations program to increase capacity and safety, henceforth referred to as TOPICS.

§ 655.102 Definitions.

The terms used in these regulations shall be defined in accordance with the definitions and usage of Title 23 of the United States Code (23 U.S.C.).

§ 655.103 Policy.

(a) Congress has found it to be in the national interest for each State to have a continuing program within the designated boundaries of urban areas designed to reduce traffic congestion and to facilitate the flow of traffic.

(b) TOPICS has been designed to provide the kinds of improvements which will achieve the maximum potential for capacity and safety of the city street system as it presently exists. TOPICS projects are projects of a traffic engineering nature and are operational kinds of improvements involving limited capital construction.

§ 655.104 Procedures.

(a) The Division Engineer of the FHWA shall determine that feasible traffic engineering measures have been fully considered in the development of short range transportation improvement programs for each urban area of more than fifty thousand population in accordance with the continuing, coordinated comprehensive transportation planning process (3C process) under 23 U.S.C. 134. This means that each urban area of more than fifty thousand population must have a short range transportation improvement program which includes traffic operational improvements arranged on a priority basis. In urban areas which do not have an on-going 3C process, the Division Engineer

shall determine that a continuing traffic engineering function is being carried out by the responsible local officials before approval of projects on any Federal-aid system.

(b) TOPICS projects shall be implemented under normal Federal-aid urban and urban system program project procedures as established by this title, including the requirements of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", unless other procedures as approved by the Administrator are applicable.

(c) TOPICS projects are made up of miscellaneous kinds of work that are generally considered minor items on regular urban highway construction projects. Therefore, in accordance with 23 U.S.C. 101(e), the Division Engineer may authorize certain timesaving procedures for specific projects or for a program of projects, as follows:

(1) Clearinghouse requirement. Certain types of projects are of such a nature or magnitude that they will have no effect on decisions or public works activities of concern to clearinghouse agencies established under the Office of Management and Budget Circular A-95. The Division Engineer should work with the State to identify such types of projects and have the State develop agreements with appropriate areawide clearinghouses for the exemption of these projects from notification and review requirements or arrange for rapid screening.

(2) 3C Planning requirement. The Division Engineer may determine that the urban transportation planning process requirements promulgated under 23 U.S.C. 134 are not applicable if the project or projects will not result in an alteration of land use or traffic flow patterns that would require a significant change in planning completed or underway.

(3) Environmental statement requirement. Under the provisions of the Council on Environmental Quality (CEQ) Guidelines (40 CFR Part 1500) and the regulations of this agency promulgated thereunder, it may be determined that the project is of such a nature that an environmental impact statement is not required.

(4) Public hearing requirement. The Division Engineer may determine that the provisions of 23 CFR Part 790 which require public hearings and notification thereof are not applicable if the abbrevi-

ated procedures in (c) (1), (2), and (3) of this section are all utilized. If the State has an approved Action Plan containing public hearing procedures which was developed pursuant to 23 CFR Part 795, the hearing procedures of the State's Action Plan will apply.

(5) In addition to the procedures outlined in (c) (1) through (4) of this section, the Division Engineer should encourage the utilization of other time-saving procedures such as use of abbreviated plans, grouping of improvements as a single project, combining project action, and simplified inspection procedures.

§ 655.105 Eligibility.

(a) All types of traffic engineering improvements on the Federal-aid urban system and extensions of the Federal-aid primary and secondary systems in urban areas are eligible for Federal-aid funding.

(b) An offstreet replacement parking facility may be approved for participation with Federal-aid funds provided the following conditions are met:

(1) A determination is made that a TOPICS improvement cannot be successfully implemented unless replacement parking is provided as an integral part of the project.

(2) The removal of onstreet parking is an integral and necessary part of a highway project which will improve the safety and capacity of the facilities involved.

(3) Analysis of the utilization of existing on and offstreet parking space (both public and private) clearly establishes a need for replacement of parking space which will be eliminated by the proposed improvement project.

(4) The development of an offstreet parking facility is compatible with the masterplan and appropriate transportation improvement plans of the community and has the approval of the responsible local officials.

(5) Development of the offstreet parking facility does not result in displacement of people or businesses and does not require the acquisition of extensive right-of-way.

(6) The facility replaces onstreet parking spaces to be eliminated by the project and is located so as to serve the same businesses and clientele previously served by the onstreet parking spaces.

(7) Ownership of the offstreet park-

ing facility is assumed by a public agency (State or city) which will be responsible for its maintenance and operation.

(8) Any fees charged for the use of the offstreet facility are to be used to control parking usage or to offset the cost for maintenance and operation of the facility, or both, but are not to be used to repay obligations incurred by the owner in connection with developing the facility.

(9) A showing is made that all feasible alternates have been considered prior to development of the recommended scheme including (i) the investigation of alternate sites for the offstreet facility, (ii) modification in parking policies and enforcement of parking restrictions to discourage long term usage in prime commercial locations, and (iii) development of fringe and corridor parking facilities in combination with public transit in lieu of replacement parking in downtown areas.

(c) The Division Engineer is authorized to approve projects under section 655.105(a). Until further notice, projects for offstreet replacement parking facilities, section 655.105(b), must be submitted to the Regional Office of the FHWA for review and approval.

[39 FR 26414, July 19, 1974; 39 FR 45215, Dec. 31, 1974]

§ 655.106 Maintenance of traffic operations improvements.

Where the city or other local jurisdiction has a functional traffic engineering unit within its own organization, provision 10 of the Federal-Aid Project Agreement should be modified so that prior approval of changes in traffic and parking regulations will not be required. The existence of a functioning traffic engineering unit shall be determined by the State and concurred in by the Division Engineer, based on the demonstrated ability of the unit to apply and maintain sound traffic operations and control.

§ 655.107 Evaluation.

(a) The State shall annually evaluate its TOPICS program and make the results of the evaluation available to the FHWA so that an annual TOPICS report can be made to Congress as required by 23 U.S.C. 135(c).

(b) Evaluation programs may be financed under 23 U.S.C. 104(f), 307(c) and 402.

Subpart B—Pavement Marking Demonstration Program

AUTHORITY: 23 U.S.C. 151, 315 and delegation of authority at 49 CFR 1.48.

SOURCE: 39 FR 16443, May 9, 1974, unless otherwise noted.

§ 655.201 Scope of the rules in this part.

The rules in this part prescribe the policies and procedures followed by the Federal Highway Administration to implement the Pavement Marking Demonstration Program.

§ 655.203 Authority.

The Pavement Marking Demonstration Program is authorized by section 205 of the Highway Safety Act of 1973, 23 U.S.C. 151.

§ 655.205 General policies.

(a) *Eligible projects.* A pavement marking project is eligible for inclusion in a State's program if it is on any paved highway located within the State, except a highway included in the Interstate System. A project may be on either a highway on a Federal-aid system (except the Interstate System) or a highway off the Federal-aid systems, including a highway under the jurisdiction of a political subdivision of the State. However, except as provided in § 655.211, a project must not include renewal of pavement markings that conform to the standards set forth in the 1971 edition of the Manual on Uniform Traffic Control Devices.

(b) *Objective of the Program.* The objective of the Pavement Marking Demonstration Program is to demonstrate the value of pavement markings in providing greater vehicle and pedestrian safety. To this end, each project must produce a highway which has pavement markings that conform to the standards set forth in the 1971 edition of the Manual on Uniform Traffic Control Devices.¹

(c) *Priorities for approval of programs.* In establishing programs the States shall give priority to—

(1) Projects on two-lane highways which are located in rural areas and which either are on the Federal-aid secondary system or are not included on any Federal-aid system; and

(2) Projects on routes or systems having high accident rates, when it is probable that adequate pavement markings will reduce the high accident rate.

(d) *Methods of performing work on projects.* Work on projects included in a State's program may be performed by either—

(1) Force account methods in accordance with Policy and Procedure Memorandum 21-6.2²;

(2) Contracts awarded by normal competitive bid methods; or

(3) Negotiated contracts containing firm unit prices.

§ 655.207 Procedure for participation in Pavement Marking Demonstration Program.

(a) *Development of program.* A State which wishes to participate in the Pavement Marking Demonstration Program must develop, and submit to the Federal Highway Administration, a program of proposed pavement marking projects that conform to the rules in § 655.205. A program may consist of a single project for the entire State, or may be broken down by geographic areas or by systems as the State may desire.

(b) *Contents of program.* The State's program must generally describe the work to be accomplished and must include—

(1) A description of the procedures for evaluating the results of each project;

(2) A listing by counties of the number of miles of pavement to be marked by class of road (Federal-aid system and non-Federal-aid system);

(3) A description of the type of striping or other markings to be applied in each project;

(4) An estimate of the total cost of each project and of the program as a whole; and

(5) A description of the method to be used to perform the work on each project.

(c) *Submission and review of program.* A State's program must be submitted to the Federal Highway Administration Division Engineer. The Division Engineer will review the program to determine whether it conforms to the rules in this part.

¹ The Manual on Uniform Traffic Control Devices is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at a price of \$3.50 per copy.

² Copies of Policy and Procedure Memorandum 21-6.2 are available for inspection and copying as prescribed in 49 CFR Part 7, App. D.

§ 655.209 Marking standards.

(a) *General rule.* In the performance of pavement marking projects, the marking standards specified in the 1971 edition of the Manual on Uniform Traffic Control Devices, including the standards for pedestrian crosswalks and stop lines, must be followed. In addition, the rules in paragraphs (b) and (c) of this section apply to pavement marking projects.

(b) *Centerlines.* Centerline markings must consist of one of the three types specified in section 3B-1 of the Manual on Uniform Traffic Control Devices. Centerline markings must be applied to a highway which—

(1) Has a paved surface that is 16 feet wide or wider; and

(2) Carries an average daily traffic volume of 250 vehicles or more.

(c) *Edge lines.* Except as otherwise approved by the Administrator, edge lines as prescribed in the Manual on Uniform Traffic Control Devices must be applied to a highway which—

(1) Has a paved surface that is 20 feet wide or wider; and

(2) Carries an average daily traffic volume of 250 vehicles or more.

§ 655.211 Funding.

(a) *Eligible costs.* The entire cost of materials, labor, and equipment rental or depreciation, necessary to apply pavement markings may be paid with funds authorized to carry out the Pavement Marking Demonstration Program. In addition, those funds are available to pay the cost of renewing markings applied under this Program for as long as is necessary to enable the effectiveness of the markings to be evaluated during a period of at least two years.

(b) *Ineligible costs.* Funds authorized to carry out the Pavement Marking Demonstration Program will not be expended—

(1) To pay the cost of renewing pavement markings which were not applied under the Pavement Marking Demonstration Program and which conform to the standards set forth in the 1971 edition of the Manual on Uniform Traffic Control Devices; or

(2) To pay the cost of data collection, analysis, or evaluation. However, the costs of data collection, analysis, or evaluation may be included in a State's Highway Planning and Research Program or its Highway Safety Program, if funds allocated to either program are available.

§ 655.213 Evaluation and reporting.

(a) *Submission of report.* Each State participating in the Pavement Marking Demonstration Program must make an annual report to the Federal Highway Administrator on the progress it has made in implementing its pavement marking program and the effectiveness of the improvements made under that program. The report must be submitted to the Federal Highway Administration Division Engineer. The first report must be submitted on or before August 31, 1974. Subsequent reports must be submitted on or before August 31 of each year after 1974.

(b) *Contents of report.* The State's annual report must include—

(1) An analysis and evaluation of the change in number, rate, and severity of accidents on highways which have been marked under the State's program;

(2) The cost-benefit ratio of pavement marking improvements under the State's program, comparing the results during a period of time after application of new markings which is adequate to enable proper assessment of the benefits of the new markings with data pertaining to the same period of time before application of new markings; and

(3) Completed Form 1451 which may be reproduced locally. Data relating to a project should be in the State's report until at least two years' of data relating to that project have been reported.

Subpart C—National Standards for Signs Giving Specific Information in the Interest of the Traveling Public

AUTHORITY: (23 U.S.C. 109(d); 23 U.S.C. 131(f); 23 U.S.C. 315); and 49 CFR 1.48(b).

SOURCE: 39 FR 30346, Aug. 22, 1974, unless otherwise noted.

§ 655.301 Purpose.

The purpose of this subpart is to establish standards for signs, displays and devices giving specific information in the interest of the traveling public to be erected within the rights-of-way of the Interstate Highway System and all fully controlled access freeways on the Primary Highway System.

§ 655.302 Definitions.

(a) Except as defined in this section, the terms used in this subpart shall be defined in accordance with the definitions and usage of the Manual on Uni-

form Traffic Control Devices, 1971 edition.¹

(b) "Specific information panel" means a panel, rectangular in shape, located near the right-of-way line, readable from the main traveled ways, and consisting of:

(1) The words "GAS," "FOOD," "LODGING," or "CAMPING" and directional information; and

(2) One or more individual business signs mounted on the panel.

(c) "Roadside area information panel or display" means a panel or display, located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with specific services information.

(d) "Business sign" means a separately attached sign mounted on the specific information panel or roadside area information panel to show the brand or trademark and name, or both, of the motorist services available on the crossroad at or near the interchange.

(e) "State" means any one of the 50 States, the District of Columbia, or Puerto Rico.

§ 655.303 Location.

(a) Intended for use in rural areas. The specific information panels are designed for application at rural interchanges where a number of motorist services are not available. Specific information panels may be installed within suburban or urban areas only where the roadside development does not appear to the motorist to be urban in character.

(b) Separate panel for each type service. A separate specific information panel shall be provided on the interchange approach for each qualified type of motorist service. Where a qualified type of motorist service is not available at an interchange, the specific information panel may not be erected.

(c) Relationship to exit gore and right-of-way line. The specific information panels shall be erected between the previous interchange and ½ mile in advance of the theoretical gore for the approaching interchange. These panels shall be located near to the right-of-way line and readable from the main traveled

way. The last panel shall be erected no closer than ½ mile to the theoretical gore of the approaching interchange with at least 1000-foot spacing between the information panels. The information panels should be so located longitudinally to take advantage of natural terrain and have the least impact on the scenic environment. In the direction of traffic, the successive panels shall be those of "CAMPING," "LODGING," "FOOD," "GAS" in that order.

(d) Not to be used where reentry to freeway is inconvenient. The specific information panel may not be erected at an interchange at which an exit from the freeway is provided but at which no entrance ramp exits at that interchange or at another reasonably convenient location that would permit a motorist to proceed in the desired direction of travel without undue indirection or use of poor connection roads.

(e) Continuity of signing along exit ramp. The motorist services information, shown on the specific information panels, shall be repeated on the signs located along the interchange ramp or at the ramp terminal where the service installations are not visible from the ramp terminal. In addition, appropriate trailer assemblies or direction information panels may also be provided along the crossroad, as required, to adequately direct motorists to the respective service facilities. These signs shall be the same in shape, color, and message as those shown on the specific information panels, together with an arrow showing the directions for the different services and, where needed, the mileage to the service installation. Normally, this signing will not be necessary at double-exit interchanges. The legends or symbols on these signs shall be smaller (minimum 4-inch letter height, except that any legend on a symbol shall be in proportion to the size of the symbol) than those shown on the specific information panels.

(f) General motorist service signs. There is no need for a general motorist service sign to confirm the specific information panels erected for any of the four services. A general motorist service sign carrying any of the legends not contained on the specific information panels and also the legends "PHONE" and "HOSPITAL," when applicable, may be erected. If so used it shall be erected below the ground mounted exit direction sign, or may be a separate sign with appropriate directional information erected

¹ The Manual on Uniform Traffic Control Devices (Stock Number 5001-00021) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

a minimum of 800 feet following the last advance guide sign.

(g) Roadside area information panels and displays. Roadside area information panels and displays for subsequent interchanges shall be located within safety rest areas. Motorist services information may be displayed in one roadside area for all interchanges preceding the next roadside area which contains information panels and displays.

§ 655.304 Criteria to determine specific information permitted.

(a) Conformity with laws concerning nondiscrimination. The individual business installation whose name, symbol, or trademark appears on a business sign shall have given written assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, or national origin, and shall not be in continuing breach of that assurance.

(b) Location of service establishment from interchange. The maximum distance that the "GAS," "FOOD," "LODGING" or "CAMPING" services can be located from the main traveled way to qualify for a business sign shall be in accordance with State standards, but may not exceed 3 miles in either direction. If within that 3-mile limit one or more of the service types considered is not available, continue in 3-mile increments of consideration up to a 15-mile maximum, if necessary, to find an available service of the type being considered. Services beyond the 15-mile limit do not qualify for signing.

(c) Types of services permitted.

(1) "GAS" and associated services to qualify for erection on a panel shall include:

(i) Vehicle services such as fuel, oil, lubrication, tire repair, and water;

(ii) Restroom facilities and drinking water;

(iii) Continuous operation at least 16 hours per day, 7 days a week; and

(iv) Telephone.

(2) "FOOD" to qualify for erection on a panel shall include:

(i) Where required, licensing or approval by State or political subdivision;

(ii) Continuous operation to serve three meals a day, 7 days a week; and

(iii) Telephone.

(3) "LODGING" to qualify for erection on a panel shall include:

(i) Where required, licensing or approval by State or political subdivision;

(ii) Adequate sleeping accommodations; and

(iii) Telephone.

(4) "CAMPING" to qualify for erection on a panel shall include:

(i) Licensing or approval by appropriate public agency;

(ii) Adequate parking accommodations;

(iii) Modern, sanitary facilities and drinking water; and

(iv) Provisions for removal or covering of the business signs during off-season if operated on a seasonal basis.

§ 655.305 Composition.

(a) Limitation of business signs. The "GAS" specific information panel shall be limited to six business signs; the "FOOD," "LODGING" and "CAMPING" specific information panels shall be limited to four business signs each.

(b) Single-exit interchanges. For a single-exit interchange, the business signs shall be arranged on the panel, with a maximum of two horizontal rows. When the number of business signs is one-half or less of the maximum permitted, the arrangement shall be in one horizontal row. The maximum in one horizontal row shall be limited to one-half of the maximum permitted on the panel. The signs shall be mounted on the panel in the order of the travel distance measured from the point of the intersection of the main traveled way and the exit traveled way, the closest at the top left, the next closest at the bottom left, and continuing to the end.

(c) Double-exit interchanges. In the case of a double-exit interchange, the specific information panels shall consist of two sections where the same type of motorist services are to be signed for each exit. The arrangement of the business signs on each section of the panel shall be in accordance with the requirements for a single-exit specific information panel. For double-exit interchanges, the travel distance shall be measured from the intersection of the main traveled way and the first exit traveled way. The specific information panel shall display the appropriate business sign or signs and directional information for each exit. The top section of this panel shall display the business signs for the first exit with the directional legend "NEXT RIGHT" or "NEXT LEFT." The lower section of the panel shall display the business signs for the second exit with the direction legend

"SECOND RIGHT" or "SECOND LEFT." Exit numbering, where used, may be placed on the panels, such as **"EXIT 28"** in place of the **"NEXT RIGHT," "NEXT LEFT," "SECOND RIGHT,"** or **"SECOND LEFT"** message. The number of business signs on this panel (total of both sections) shall be limited to six for **"GAS,"** or four each for **"FOOD," "LODGING"** and **"CAMPING."**

(d) Commercial symbols or trademarks. Business signs composed of nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants, motels and campgrounds shall be used when applicable. The brand or trademark identification symbol used on the business sign shall be reproduced with the colors and general shape consistent with customary use. Any messages, trademarks, or brand symbols which interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal or device are prohibited.

§ 655.306 Size.

(a) Business Signs.

(1) The business signs displayed on the **"GAS"** information panel shall be contained within a 48-inch wide and 36-inch high rectangular background area, including border.

(2) The business signs on the **"FOOD," "LODGING"** and **"CAMPING"** information panels shall be contained on a 60-inch wide and 36-inch high rectangular background area, including border.

(b) Information panel—single-exit interchange.

(1) The maximum size of the **"GAS"** specific information panel shall be 15 feet wide and 10 feet high, including border; the minimum size shall be 15 feet wide and 6 feet high including border.

(2) The maximum size of the **"FOOD," "LODGING"** and **"CAMPING"** specific information panels shall be 13 feet wide and 10 feet high, including border; the minimum size shall be 13 feet wide and 6 feet high including border.

(c) Information panel—double-exit interchange.

(1) For double-exit interchanges where the same type of motorist services are to be signed for each exit, the specific information panels shall be as follows:

(i) **"GAS"** shall consist of two 15-foot wide and 6-foot high sections, one for each exit.

(ii) **"FOOD," "LODGING"** and **"CAMPING,"** the specific information panels shall consist of two 13-foot wide and 6-foot high sections, one for each exit.

(iii) Each section shall be capable of accommodating a maximum of either three gas business signs or two food, lodging or camping business signs.

(2) For double-exit interchanges where a type of motorist service is to be signed for only one exit, only one specific information panel may be used—15-foot wide by 6-foot high for **"GAS"** and 13-foot wide by 6-foot high for either **"FOOD," "LODGING"** or **"CAMPING."**

(d) Roadside area information panels and displays. Latitude in design is permitted in provision of roadside area information panels or displays. Design by the State should include considerations of the architectural treatment of the buildings and other structures in the roadside area. Additional considerations are recreational, historic, and other sightseeing attractions in the area. Flexibility in design is expected and desirable. Standard symbols and trademarks, where applicable, can be used for glance recognition.

§ 655.307 Color, reflectorization, and illumination.

(a) Specific information panel. The background color of the specific information panel shall be blue with a white reflectorized border. The words **"GAS," "FOOD," "LODGING"** and **"CAMPING"** along with the exit direction messages shall be white reflectorized 10-inch capital letters mounted on the blue panel. The specific information panel may be illuminated.

(b) Business signs. The business sign color shall be a white message on a blue background, except that colors consistent with customary use should be used with nationally, regionally, or locally known symbols or trademarks. The principal legend on the business sign shall be at least 10 inches in height, whether upper or lowercase alphabet is used. However, where the symbol or trademark is used alone for the business sign, any legend on the symbol or trademark shall be in proportion to the size thereof, consistent with customary use. The business signs shall have a white border except that when symbols or trademarks are used the border may be omitted.

§ 655.308 Transverse location of signs and structural design of sign supports.

(a) Specific information panels. The specific information panels shall be located near the right-of-way line, well outside the normal mowing limits but in a location where they are readable from the traveled ways. Consideration should be given to the natural terrain and the placement of the panels should not be obtrusive to the scenic environment.

(b) Supports. When the information panels are located as stated above, the lateral offset from the pavement edge may be sufficient to preclude the panels from being hit by out-of-control vehicles. Breakaway sign supports therefore will not always be necessary. If the right-of-way is rather narrow or, due to the terrain, there is a higher probability of the panels being hit, breakaway supports shall be used.

§ 655.309 Inclusiveness of use.

(a) Prerogative rests with States. The prerogative to exercise the permitted authority to erect specific service signs on the Interstate System and fully controlled access freeways on the Primary System in any State rests with the individual State.

(b) Available options. States electing to provide service signing as described in this directive may choose to install:

- (1) Specific information panels only;
- (2) Roadside area information panels or displays only; or
- (3) Both specific information panels and roadside area information panels or displays.

(c) Signing Limitations. There shall be no signing permitted under 23 U.S.C. 131(f) other than the specific service signing as described in this subpart.

§ 655.310 Procedures to be followed by the State.

(a) Eligibility of funds. Federal-aid Interstate and Primary funds are eligible to participate in the cost and erection of these signs in the same manner that such funds are eligible for other highway signs on the Interstate and Primary Systems, except that Federal-aid funds are not eligible to participate in the cost of procuring and installing the business signs as defined in § 655.302(d).

(b) Programming, project authorization and other actions. The procedures for obtaining approval for programming, project authorizations and other actions for Federal-aid projects including these signs shall follow the same procedures in use for other Interstate and Primary projects. States desiring to erect these signs on the Interstate Highway System and all fully controlled access freeways on the Primary Highway System without Federal-aid fund participation shall submit the plans to the FHWA Division Engineer for prior approval. No signs shall be approved which do not conform to the requirements of these standards.

(c) Consultation between the State and the Secretary. The State's request and Division Engineer's approval of plans, specifications, and estimates (PS&E) in the case of a Federal-aid project and his approval of the plans in the case of a non-Federal-aid project shall constitute the consultation between the State and the Secretary as required by law.

Subpart D—Traffic Surveillance and Control

AUTHORITY: 23 U.S.C. 101(a) and 315 and 49 CFR 1.48.

SOURCE: 39 FR 33208, Sept. 16, 1974, unless otherwise noted.

§ 655.401 Purpose.

This part establishes policies and procedures relating to the expenditure of Federal-aid highway funds for traffic surveillance and control measures to reduce congestion, improve traffic flow, and increase safety.

§ 655.402 Objectives.

The principal objectives of this part are:

(a) To promote utilization of proven technology and traffic operational strategies for improving the efficiency and safety of traffic flow.

(b) To outline procedures for determining effective utilization of traffic surveillance and control measures.

(c) To define those surveillance and/or control designs, operations, and devices which are eligible for installation and participation using Federal-aid highway construction funds.

(d) To outline procedures for the administration of such projects.

§ 655.403 Definitions.

For the purpose of this part the following definitions shall apply:

(a) "Traffic surveillance" is the act of continuously obtaining traffic flow data for the purpose of qualitative or quantitative analysis.

(b) "Traffic control" is the act of regulating, guiding, or warning traffic by mechanical and/or electrical means.

(c) "Traffic surveillance and control" is the act of obtaining traffic data, analyzing these data and with this analysis as a basis, causing traffic control and/or traffic information displays to be actuated at one or several locations within an area, on a street, or on a highway facility.

(d) "A traffic surveillance and control system" is the assembly of necessary components, which may include automatic data collection capability, into a configuration suitable for providing traffic surveillance and control.

(e) "Ramp control" is the regulation of traffic flow on expressway or freeway entrance ramps utilizing traffic control devices and measures.

§ 655.404 General system characteristics.

The general purpose of traffic surveillance and control is to improve the safety and quality of traffic flow by preventing or relieving congestion.

§ 655.405 Traffic engineering analyses.

(a) The recommendation of a traffic surveillance and control system shall be based on traffic engineering analyses of the use and physical features of the highway facility, section, or network under consideration. The depth and complexity of the analyses should be consistent with the extent of the problem to be solved. Data available from existing and continuing traffic engineering studies, transit improvement efforts, the transportation planning process, and other sources should be fully utilized in the engineering analyses.

(b) The analyses should identify those locations, and sections of highway facility or network which experience critical operational problems or are predicted to experience such problems regularly under normal daily traffic demand and environmental conditions, and for which traffic surveillance and/or control can be expected to provide improved traffic flow and safety.

(c) The analyses should define the limits of the area within which automatic traffic surveillance and control is considered feasible prior to completing the design of a comprehensive system.

(d) The analyses for all types of surveillance and control systems shall include consideration of alternative concepts, configurations, and devices. In each case, the alternate possibilities shall include special consideration for provision of the supervisory component and the communication component.

(e) Existing traffic laws, ordinances, and regulations relevant to the effective operation of the proposed system shall be reviewed to insure compatibility with proposed systems.

§ 655.406 Eligibility.

Traffic surveillance and control projects on the Federal-aid highway system are eligible for funds apportioned under 23 U.S.C., 104(b). Eligible items include, but are not limited to, the following:

(a) Preliminary engineering including necessary traffic engineering analysis.

(b) Preparation of software and initial programming of system operation where pertinent. Utilization of Federal Highway Administration-developed software products shall be given priority consideration in the implementation of traffic surveillance and control systems. In those systems which are designed to provide the basic functions which such software now provides or is scheduled to provide in the future, as a result of continuing research and development, the Federal Highway Administration-developed software may not be excluded from consideration. This consideration shall be on a cost competitive basis with other acceptable concepts providing equivalent functions. In those cases where utilization of such products is excluded from proper consideration, pertinent elements of the project may not be eligible for Federal-aid participation.

(c) Hardware acquisition and installation including, but not limited to, the following:

(1) Appropriate surveillance equipment to automatically obtain traffic operations data that will be utilized to control traffic flow or otherwise improve traffic operation.

(2) Nonautomatic surveillance equipment such as closed circuit television to provide rapid response to incidents or visual confirmation of control actions,

in those situations for which its application is especially suited and justified such as tunnels, operation of movable bridges, reversible or preferential lane use systems, major complex urban interchanges, or other problem areas.

(3) Appropriate traffic control display equipment.

(4) Appropriate supervisory control equipment. Federal-aid participation in computers shall be limited to the costs of equipment which is adequate for the current tasks and capable of expansion to handle such needs for a period of up to 10 years.

(5) Communication equipment including the transmission link and necessary interface elements. Where telephone lines constitute the transmission link, only that portion of the leasing charge for a 10-year period, which represents construction costs, is an eligible item.

(d) Housing that is appropriate and necessary for the supervisory control component.

(e) Evaluation, following installation, in accordance with requirements outlined in § 655.409.

§ 655.407 Project administration.

(a) Project approval actions will be with the division engineer subject to review by the regional administrator prior to approval of plans, specifications, and estimates.

(b) The plans, specifications, and estimates submittal shall include a total system acceptance plan for hardware and software to verify the performance of specified system functions. An evaluation work plan as outlined in § 655.409 shall be included.

(c) Information regarding contractor and manufacturer guarantees and warranties is furnished in Volume 6, Chapter 4, section 2, subsection 5 of the Federal-aid Highway Program Manual.

§ 655.408 Maintenance of traffic surveillance and control improvements.

(a) The full potential for improving the efficiency of a highway facility or network through the utilization of surveillance and control measures can be realized only if the system installed is operated and maintained by an adequate and well-trained staff of traffic engineers and technicians.

(b) Maintenance requirements are in accordance with 23 U.S.C. 116.

§ 655.409 Evaluation.

(a) The State shall evaluate all traffic surveillance and control projects installed with Federal-aid highway fund participation.

(b) The evaluation procedure should be designed to measure the effects that surveillance and control have had on safety and traffic flow quality. To do this, the evaluation must reflect comparisons of effectiveness measurements determined prior to operation of the control components of the system with those determined under system operation. Traffic safety and efficiency parameters such as volumes, accidents, accident rates, travel speed, travel time, delay, density, etc., should be used.

(c) Evaluation should be scheduled to begin at the earliest possible date that will accurately reflect stable operating conditions.

(d) Evaluation reports, in summary report form, should be forwarded through the division engineer who will transmit copies to the Region Office and the Office of Traffic Operations.

(e) These requirements apply only to the evaluation performed immediately following the initiation of system operation.

Subpart E—Highway Safety Improvement Program

AUTHORITY: The provisions of this Subpart E are issued under 23 U.S.C. 105(f), 152, 153, 315, and 405, section 203 of the Highway Safety Act of 1973 and delegation of authority at 49 CFR 1.48.

SOURCE: 39 FR 27434, July 29, 1974, unless otherwise noted.

§ 655.501 Purpose.

The rules in this subpart prescribe the policies, procedures and guidelines for the development of a program for the detection, through accident analysis, of specific locations, elements or sections of all highways that are hazardous or potentially hazardous and for implementing corrective measures for the identified hazards.

§ 655.502 Definitions.

(a) "Highway" means any public road under the jurisdiction of and maintained by a public authority and open to public travel.

(b) "Roadside obstacle" means any fixed object alongside a highway (generally within 30 feet of traveled way)

that may be a hazard to vehicles or pedestrians.

(c) "High hazard location" means any location which has a greater than average accident experience and any location with like characteristics to a location having greater than average accident experience.

§ 655.503 Policy.

Each State shall develop and implement on a continuing basis a highway safety improvement program including logical and comprehensive procedures for the selection, scheduling, construction and evaluation of highway safety improvement projects, on all highways, with the specific objective of reducing the number and severity of accidents.

§ 655.504 Program elements.

Each State highway safety improvement program shall include the following elements covering all highways:

(a) A process for the identification of safety needs, including:

(1) A reference system to determine accurately the location of individual accidents.

(2) A traffic records system which correlates accident experience with highway data, with the ultimate objective of identifying highway causative factors of accidents and accident severity.

(3) A procedure for identifying and reporting hazardous locations, elements, and sections of highways based on a review of:

(i) Accident experience at specific locations.

(ii) Accidents related to specific elements of the roadway environment.

(iii) Sites with like characteristics to locations having a greater than average accident experience.

(4) An engineering survey, systematically maintained, of all railroad-highway crossings to identify those crossings which may require separation, relocation, or warning devices.

(5) An engineering survey, systematically maintained, of all highways to identify roadside obstacles which may constitute a hazard to vehicles or pedestrians.

(6) The identification of locations with low skid resistance.

(7) The identification of locations with hazardous conditions associated with narrow bridges.

(b) A process for the systematic correction of identified safety needs including:

(1) The establishment of, and assignment of priorities to, a schedule of safety improvements.

(2) The implementation of the systematic correction of identified hazards.

(c) An evaluation of the program, including:

(1) A process to determine the effects the improvements have in reducing accidents and accident severity.

(2) An annual evaluation and report of the State's overall safety improvement program and the State's progress in implementing the individual programs established by the Highway Safety Act of 1973.

§ 655.505 Program procedures.

(a) *Establishment of priorities*—(1) *Railroad-highway grade crossings* (section 203 of the Highway Safety Act of 1973). (i) Section 203(a) of the Highway Safety Act of 1973 requires as a minimum that each State's schedule of improvements shall provide signs at all crossings. As a first priority, each State, in cooperation with the involved railroad and any other agency having jurisdiction, shall identify those grade crossings at which there are either no signs or non-standard signs and institute an improvement program to provide signing and pavement marking in compliance with the Manual on Uniform Traffic Control Devices¹ at all grade crossings.

(ii) At least one-half of the funds authorized under section 203 of the Highway Safety Act of 1973 are to be used for crossing warning devices (crossbuck warning signs, advance warning signs, pavement markings, illumination, flashing light signals with or without automatic gates). The remainder may be used for any type of work for the elimination of hazards of railroad-highway grade crossings.

(iii) The priority schedule of crossing improvements should be based on:

(A) The ranking of crossings using the State's current hazard index.

(B) An onsite inspection.

¹ The Manual on Uniform Traffic Control Devices is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at a price of \$3.50 per copy.

(C) Accident history.

(2) *High-hazard locations* (23 U.S.C. 152). Using the accident data and information developed under § 655.504(a) (3), (6) and (7), project priorities for high-hazard locations shall be established, giving primary consideration to the anticipated reduction in number of accidents and accident severity, the cost of corrective measures and the feasibility of implementing the improvements.

(3) *Elimination of roadside obstacles* (23 U.S.C. 153). Priorities for the elimination of roadside obstacles should be determined, utilizing the survey data developed under § 655.504(a) (5) and the State's accident information relative to fixed objects.

(4) *Federal-aid safer roads demonstration program* (23 U.S.C. 405). Each State, in conjunction with local officials where appropriate, shall assign priorities, based on the potential for reduction in accidents and accident severity, to projects identified for the Federal-aid safer roads demonstration program for all highways not on the Federal-aid system. The identified projects shall be based on the listing that was required of each State not later than June 30, 1974, in compliance with 23 U.S.C. 405(b).

(b) *Project selection.* (1) Highway improvement projects for each of the following types of improvements may be approved by the Division Engineer only after the State has prepared, on the basis of its surveys and priority rankings, a schedule or list of projects to be implemented for that particular type of improvement:

(i) *Railroad-highway grade crossing improvements.* Projects for railroad-highway grade crossing improvements shall be selected from the priority listing developed in accordance with paragraph (a) (1) of this section. First priority shall be given to those grade crossings at which there are no warning signs or non-standards signs.

(ii) *High-hazard locations.* Projects for the improvement of identified high-hazard locations on the Federal-aid system shall be selected from a priority listing developed by the procedures set forth in § 655.504(a) (3), (6), and (7), § 655.504(b), and paragraph (a) (2) of this section.

(iii) *The elimination of roadside obstacles.* Projects for the removal, re-

location, remodeling, or shielding of roadside hazards shall be selected from the priority listings developed in accordance with § 655.504(b) and paragraph (a) (3) of this section.

(iv) *Federal-aid safer roads demonstration projects.* The State shall utilize the engineering survey data developed as a result of the requirements of § 655.504(a) and paragraph (a) of this section along with high-priority safety projects identified by local governmental authorities in the selection or designation of projects for the Secretary's approval.

(2) If the priority lists have not been completed but are underway the implementation of high priority safety projects should not be delayed until all of the survey requirements are satisfied.

§ 655.506 Project procedures.

(a) Safety projects shall be implemented under normal Federal-aid program project procedures as established by the Federal-Aid Highway Program Manual² unless otherwise provided herein or otherwise approved by the Administrator.

(b) Safety projects are made up of miscellaneous kinds of work that are generally considered minor items on regular highway construction projects. Therefore, in accordance with the policy prescribed in 23 U.S.C. 101(e), the Division Engineer may authorize certain timesaving procedures for specific projects or for a program of projects. Such procedures should be utilized to the extent feasible and may include:

(1) *Use of State forces.* The Federal Highway Administrator finds it to be in the public interest for a State or local government to use its own forces for highway safety improvement projects, if the State so requests.

(2) *The Clearinghouse requirement.* Certain types of projects are of such a nature or magnitude that they will have no effect on decisions or public works activities of concern to clearinghouse agencies established under Office of Management and Budget Circular A-95 (Federal-Aid Highway Program Manual, Volume 4, Chapter 1, section 2). The Division Engineer should work with the State to identify such types of projects

² The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7 App. D.

and have the State develop agreements with appropriate areawide clearing-houses for the exemption of these projects from notification and review requirements or arrange for rapid screening.

(3) *Urban transportation planning review.* The Division Engineer may determine that the urban transportation planning review requirements (Federal-Aid Highway Program Manual, Volume 4, Chapter 4, section 2) are not applicable if the project or projects will not result in an alteration of land use or traffic flow patterns that would require a significant change in planning completed or underway.

(4) *Environmental statement requirement.* Under the provisions of Federal-Aid Highway Program Manual, Volume 7, Chapter 7, section 2 (Environmental Impact and Related Statements), it may be determined that the project is of such a nature that an environmental impact statement is not required.

(5) *Public hearing requirement.* The Division Engineer may determine that the provisions of PPM 20-8 (Federal-Aid Highway Program Manual, Volume 7, Chapter 7, section 5 and part of section 6) (pertaining to public hearings and location/design approval) which require public hearings and notification thereof are not applicable if the abbreviated procedures in paragraphs (b) (2), (3), and (4) of this section are all utilized. If the State has an approved Action Plan containing public hearing procedures which was developed pursuant to Federal-Aid Highway Program Manual, Volume 7, Chapter 7, section 7 (Process Guidelines) the hearing procedures of the State's Action Plan will apply.

(6) *Miscellaneous timesaving procedures.* In addition to the procedures outlined in paragraph (b) (1) through (5) of this section, in order to minimize paperwork and prevent unnecessary delays, whenever feasible the Division Engineer should encourage the utilization of other time-saving procedures such as use of abbreviated plans, grouping of improvements as a single project, combining project action, and simplified inspection procedures.

(c) If a State is without legal authority to construct or maintain a project under 23 U.S.C. 405 the State shall enter into a formal agreement for such construction or maintenance with the appropriate officials of the political subdivision.

§ 655.507 Funding.

(a) Safety improvement projects on the Federal-aid highway system for all categories of improvements set forth in this part are eligible for funds apportioned under 23 U.S.C. 104(b) at the normal pro-rata share. Specific categories of safety improvements on the Federal-aid highway systems other than Interstate are eligible for funds authorized by 23 U.S.C. 152 and 153 and by section 203 of the Highway Safety Act of 1973. Specific categories of safety improvements on any highway not on a Federal-aid system are eligible for funds authorized by 23 U.S.C. 405. The Federal share of a project funded from an authorization under 23 U.S.C. 152, 153, or 405 or section 203 of the Highway Safety Act of 1973 shall be 90 percent of its cost.

(b) The normal 90 percent Federal share for section 203 projects may be increased in exceptional cases. This increase may be approved solely where State funds are available which, under State law, may be spent only when the local government produces matching funds and the production of the matching funds would result in an undue hardship for the local government.

(c) The railroad share of costs of railroad-highway grade crossing improvement projects funded under 23 U.S.C. 405 and section 203 of the Highway Safety Act of 1973 will be determined in accordance with Federal-Aid Highway Program Manual, Volume 6.

§ 655.508 Evaluation and reporting.

(a) *Submission of annual report.* Each State must make an annual report (OMB 04-R2450) to the Federal Highway Administrator evaluating its overall highway safety improvement program and reporting on the progress it has made in implementing each of the programs established by the Highway Safety Act of 1973 covered by this part and the effectiveness of the improvements made. The report must be submitted to the Federal Highway Administration Division Engineer by August 31 of each year.

(b) *Contents of annual report.* (1) The State's annual report must include an evaluation of its overall highway safety improvement program on a fiscal year basis including projects funded under programs established by the Highway Safety Act of 1973, safety improvement projects utilizing funds apportioned un-

der 23 U.S.C. 104(b), and projects utilizing solely State and local funds.

(2) In addition to the information required by paragraph (b) (1) of this section, the State's annual report must include the following information for each of the programs established under 23 U.S.C. 152, 153, 405, and section 203 of the Highway Safety Act of 1973:

(i) An assessment of the cost of, and the safety benefits derived from, the various means and methods used to mitigate or eliminate identified hazards.

(ii) A comparison of accident data during a period of time before the improvements with accident data pertaining to a similar period after the improvements.

(iii) The basic cost data for each type of corrective measure and the number of each type of improvement undertaken during the year.

(3) In addition to the information required by paragraph (b) (1) and (2) of this section, the State's annual report must include the information indicated for the following programs established by the Highway Safety Act of 1973:

(i) *Section 203 of the Highway Safety Act of 1973.* (A) Status of the railroad-highway crossing survey and the method or methods proposed to keep the survey current.

(B) The method employed in establishing project priorities.

(C) Problems encountered in advancing projects and recommendations for corrective action.

(ii) *23 U.S.C. 152.* (A) Criteria utilized for identifying a high-hazard location.

(B) Number of high-hazard locations identified during the year using the criteria referred to in paragraph (b) (3) (ii) (A) of this section.

(C) Method employed in establishing project priorities.

(iii) *23 U.S.C. 153.* (A) *The survey* quantity of each identified obstacle.

(B) Method employed in establishing project priorities.

(C) Proposed schedule for elimination of obstacles.

(D) Method or means proposed to keep the survey of roadside obstacles current.

(E) Number of improvements made for each of the kinds of identified obstacles.

(iv) *23 U.S.C. 405.* (A) *The June 30, 1974, listing of projects identified for the Federal-Aid Safer Roads Demonstration*

Program and the estimated cost of the needed safety improvements.

(B) The distribution of the projects of the June 30, 1974, listing by road systems (collector road, local road) and governmental jurisdiction (county, city, township, etc.).

(C) Criteria utilized for the assignment of priorities to provide for the most effective improvements in highway safety.

(4) Once basic program items such as procedures, methods and priority criteria have been included in an annual report, subsequent reports need only discuss additions or changes to such basic program items.

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

AUTHORITY: 23 U.S.C. 109(b), 109(d) and 402(a) and 23 C.F.R. 1204.4.

SOURCE: 39 FR 35650, Oct. 3, 1974, unless otherwise noted.

§ 655.601 Purpose.

This subpart prescribes the policies and procedures of the Federal Highway Administration to obtain basic uniformity in the visible features and functioning of traffic control devices on all highways in accordance with the 1971 edition of the Manual on Uniform Traffic Control Devices on Streets and Highways (MUTCD)¹ and current amendments as given in the MUTCD Official Rulings.²

[39 FR 35650, Oct. 3, 1974; 39 FR 37637, Oct. 23, 1974]

§ 655.602 Definitions.

The terms used in this subpart shall have the meanings as given in Part VIII of the MUTCD and as shown below:

(a) "Shall"—A mandatory condition. Where certain requirements in the design or application of the device are described with the "shall" stipulation, it is mandatory when an installation is made that these requirements be met.

(b) "Should"—An advisory condition. Where the word "should" is used, it is to be advisable usage, recommended but not mandatory.

¹ Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 Stock No. 5001-00021, Price \$4.90.

² Available from the Federal Highway Administration, Office of Traffic Operations, HTO-21, Washington, D.C. 20590.

(c) "May"—A permissive condition. No requirement for design or application is intended.

(d) "Trail markers"—Those informational plaques or shields designed to provide the traveling public with route guidance in following a trail of particular cultural, historical, or educational significance.

§ 655.603 Standards.

(a) (1) *State and Federal-aid system routes.* To achieve basic uniformity with the MUTCD in the visible features and functions of traffic control devices a practical conversion schedule has been established for all streets and highways.

(i) The target date for full conversion of signs to the new standards is December 31, 1974. Supplemental word legend panels shall accompany new symbol-type signs until the Federal Highway Administrator determines there is general familiarity with the new signs.

(ii) The pavement marking target date for compliance was December 31, 1972, except for the yellow left edge line which has a target date of December 31, 1974.

(iii) The traffic signal target date for upgrading is established as December 31, 1976.

(iv) Construction and maintenance traffic control devices installed on all Federal-aid construction projects authorized after January 1, 1973, shall conform with Part VI, Traffic Controls for Street and Highway Construction and Maintenance Operations, MUTCD.

(2) All other public roads:

(i) The target date for full conversion of signs to the new standards is December 31, 1976.

(ii) The pavement marking target date for compliance is December 31, 1975.

(iii) The target date for upgrading traffic signals is December 31, 1977.

(iv) Compliance target date for construction and maintenance traffic control devices as contained in Part VI of the MUTCD is December 31, 1975.

(b) *State manuals.* Where State manuals or supplements are required, MUTCD changes shall be adopted periodically for conformance.

(c) *Movable bridges.* All traffic signals, warning lights, and signs on movable bridges shall conform to the section on drawbridge signals in the MUTCD except as supplemented by the following:

(1) For all movable bridges the protection for traffic is to be provided both

by resistance gates which offer protective resistance to moving vehicles and by warning gates. These shall extend across the full width of undivided roadways or across all roadway lanes approaching the draw on divided highways. Overall gate heights shall be a minimum of 4 feet. There are three allowable exceptions to this supplement:

(i) Bascule type bridges where one resistance gate or one warning gate may be provided at the trunnion ends of the bascule leaves when the leaves provide blockage of the draw openings.

(ii) Warning gates may be omitted in urban areas where intersecting streets are less than 100 feet from the draw.

(iii) Warning and resistance gates may be omitted from roadway lanes leaving the draw in restricted speed areas when barrier median curbs are provided.

(2) The resistance gates for high-speed highways preferably shall be located 50 feet or more from the draw openings.

(3) Warning gates preferably shall be of light weight construction. They shall be located 100 feet or more from the resistance gates or, when no resistance gates are used, 100 feet from the draw opening. For bridges that cross a long reach of water which may be impacted by large marine vessels, additional warning gates should be installed in positions to reduce the number of vehicles which would be exposed to hazards from marine navigation. The second warning gates need only to extend across the traffic lanes approaching the draw.

(4) The operation shall be so arranged that the drawspan cannot be opened before the resistance gates are in a closed position or the gates opened or withdrawn until the span is closed. After the warning gates are closed, a time interval shall elapse before the resistance gates come into position to allow traffic to clear the space between the gates.

(5) Gate arms shall be striped with 16-inch alternate diagonal reflectorized stripes of red and white.

[39 FR 35650, Oct. 3, 1974, as amended at 39 FR 44746, Dec. 27, 1974]

§ 655.604 Needs inventories.

(a) *Inventory.* Highway Safety Standard Number 13, Traffic Engineering Services, requires an inventory of all traffic control devices. This inventory provides the information necessary for programming a traffic control devices upgrading project. Planning work should be sched-

uled at the earliest possible date and program traffic control improvements should be scheduled successively by route or by areas within the State.

(b) *Highway planning and research funds.* These funds may be used in statewide or systemwide studies or inventories of needs for standard traffic control devices on or off the Federal-aid system, and for research costs and installation of devices or equipment connected with research studies of traffic control devices on or off the Federal-aid system.

(c) *Highway safety funds.* These funds may also be used for traffic control device inventories on all roads and streets.

[39 FR 35650, Oct. 3, 1974, as amended at 39 FR 44746, Dec. 27, 1974]

§ 655.605 Improvement projects.

(a) *Sequence and coverage.* Programs to modernize existing traffic control devices should provide for the prompt and complete conversion of nonstandard devices by using an orderly sequence on each highway route and system within a State.

(b) *Scheduling.* Before traffic control device projects on a particular route or segment thereof are authorized, agreement should be reached with the State or agency having jurisdiction on the time schedule for the total improvement program on that route. The several highway systems should usually be treated separately, with priority given to selected sections of each system where the greatest need for modern devices exists.

(c) *Project procedure.* (1) Procedures for traffic control device projects shall be the same as for other related projects, which will include programing; preparation of plans; approval of PS&E; award of contract; inspection; acceptance of work; and reimbursement for the Federal share of the final cost of work done.

(2) Project details should be shown on highway plan sheets. Simple centerline profiles usually will be sufficient. Plans should show clearly the location and type of each control device to be installed in relation to those that remain and in relation to pertinent design features.

(3) *Finished or semifinished products* to be procured for incorporation or installation in a project shall be submitted in accordance with 23 CFR Part 635, Subparts A and B.

(d) *Project numbering.* The initial provision of traffic control devices on

newly constructed sections of a highway are to be implemented under normal Federal-aid project programing and numbering procedures as detailed in 23 CFR Part 630, Subpart A.

(e) *Contracts.* For projects done under contract, work should include the furnishing of materials and devices including bases and mounting hardware and complete installation. A project should be of sufficient size to attract prospective bidders. A traffic control project should include all types of devices in a single contract for a given length of highway.

[39 FR 35650, Oct. 3, 1974; 39 FR 36860, Oct. 15, 1974]

§ 655.606 Funding.

(a) *Federal-aid highways.* (1) Funds apportioned under 23 U.S.C. 104(b) are eligible for projects to install or upgrade traffic control devices in accordance with the MUTCD when the work is construed to be construction rather than maintenance in nature. Only traffic control devices that comply with the MUTCD shall be installed on Federal-aid highways. Traffic control device projects may provide for Federal participation in replacement of signs or other devices that are changed in size, color, or otherwise to comply with the MUTCD provisions. Duplicate devices and spare parts that are needed for future maintenance are nonparticipating items. Requests to undertake traffic control device projects by the force account method shall be processed in accordance with 23 CFR Part 635, Subparts A and B.

(2) Funds apportioned under 23 U.S.C. 130, 152, and 153 are eligible under the provisions of 23 CFR Part 655, Subpart E. Funds under 23 U.S.C. 144 are eligible under 23 CFR Part 650, Subpart D. Also funds under 23 U.S.C. 151 are eligible under 23 CFR Part 655, Subpart B.

(b) *Off the Federal-aid highways.* Funds apportioned under 23 U.S.C. 402 and 405 are eligible for projects involving the installation of regulatory and warning signs off the Federal-aid highway systems in accordance with the MUTCD under the provisions of paragraph 8(c) of this part and 23 CFR Part 655, Subpart E.

§ 655.607 Signs.

(a) *New or reconstructed Federal-aid highways.* (1) Projects for construction of new highways or for major reconstruction of existing highways with participating Federal funds may include provisions for signs appropriate for the

design and traffic requirements. Highway traffic signs may also be furnished and erected as a separate traffic control device project where the extent and importance of the work warrants separate project handling. Full compliance with the standards of the MUTCD will be required on new projects.

(2) Newly constructed or reconstructed highways shall not be opened for unrestricted use by traffic until all appropriate traffic control devices, either temporary or permanent, are installed and functioning properly. When temporary traffic control devices are used, they also shall comply with the requirements of the MUTCD. Satisfactory arrangements for permanent signing must be made prior to final acceptance of construction projects. Federal funds may also participate in traffic control devices needed during the project construction period, and these devices must comply with the standards set forth in the MUTCD.

(b) *Existing Federal-aid highways.* Relocation, adjustment, or replacement of the signs on an existing highway may be undertaken as a separate traffic control device project even though the highway is not otherwise to be improved.

(c) *Regulatory and warning signs off the Federal-aid highway systems.* Projects where Federal Highway Safety funds are involved for the installation of regulatory and warning signs off the Federal-aid highway systems must be submitted through and approved by the Governor's Representative for Highway Safety. In order to be eligible for funding, the signing activity must be a part of the State's approved Annual Highway Safety Work Program and the signs shall comply with the MUTCD. The installation of the signs must be part of a systematic program to reduce crashes as a result of more effective and uniform control devices. Sign installations are eligible for funding when the signs are installed to reduce the number of crashes identified at high accident locations or to reduce the potential hazards that are documented on the basis of engineering studies. The upgrading of regulatory and warning signs to new sign designs, which are mandatory requirements in the MUTCD, are also eligible for funding. Projects must be part of a systematic program to replace nonconforming regulatory and warning signs, and must be coordinated with sign replacement programs on the Federal aid highway sys-

tem. Further information for determining eligibility can be found in the FHWA Highway Safety Program Management Guide.

(d) *Trail markers on Federal-aid highways.* (1) On Interstate Highways the use of trail markers or any other route markers are governed by applicable provisions of the MUTCD. FHWA approval shall not be given to any proposal which does not conform to these provisions.

(2) On Federal-aid routes other than the Interstate, trail marker signs may be erected when they have been approved by and are under the control of the State highway department. Control of such markers by a county or city highway department is also satisfactory if the State highway department approved their design and erection. The installations shall be consistent with general highway safety practices and with route marker erection practices as outlined in the MUTCD. No Federal-aid funds shall be authorized for the procurement or installation of such markers.

(e) *Interstate signing.* Interchange numbering shall be included on all appropriate signs both new and existing. On completed sections of the Interstate System where the existing signs and markings were provided through the use of Federal-aid Interstate funds, the eligibility for additional Federal-aid Interstate funds is as follows:

(1) Where a State has not erected interchange numbering of any type, costs relating to the posting of interchange numbers based on the milepost system are eligible for Federal-aid Interstate participation.

(2) Where existing signs incorporate interchange numbering not on the milepost basis, changes are to be made to either substitute or add milepost numbering and such work is eligible for Federal-aid Interstate funds.

(3) Where the existing sign blank is of sufficient size to adequately display messages in accordance with the MUTCD, the cost of replacement shall not receive Federal-aid Interstate participation. Federal-aid Interstate participation may be utilized for the sign blank and new message where it is not reasonably practicable to make such modifications and a new sign background is required to adequately display the message and shields required by the MUTCD.

(4) Where conditions permit practical relocation of signs and their supports in

a manner to provide substantially improved sign effectiveness or to reduce roadside hazards, cost involved in re-locating these overhead signs are eligible for Federal-aid Interstate participation.

(f) *Renumbering interstate routes.* Federal-aid Interstate funds may participate in the costs for changing route shields on those Interstate routes where an existing route number containing a cardinal initial is eliminated. The costs of shields independently mounted and on guide signs are eligible for participation.

(g) *Wrong-way traffic control.* Federal-aid highway funds may be used to provide the improvements considered necessary by the Federal Highway Administration to alleviate the hazard of wrong-way movements. See § 655.608(f) of this part for pavement marking requirements.

(1) Interchange exist ramps where the ramp intersects a crossroad in such a manner that wrong-way entry could be made.

(i) **ONE WAY** signs shall be placed where an exit ramp intersects a crossroad. Turn prohibition signs should be placed in the crossroad appropriately in advance of the ramp intersection to supplement the **ONE WAY** sign.

(ii) **DO NOT ENTER** signs shall be conspicuously placed near the end of the exit ramp in positions appropriate for full view of a driver starting to enter wrongly. It should not be assumed that a single **DO NOT ENTER** sign will be needed.

(iii) One or more pairs of **WRONG WAY** signs shall be placed at locations along an exit ramp. Such locations will normally be 250 feet or greater from the crossroad and further than the **DO NOT ENTER** sign. A second pair of **WRONG WAY** signs should be considered where the ramp geometrics favor their display.

(2) Major roads at interchange entrance ramps: Where the design of an interchange does not clearly make evident the direction of traffic on the separate roadways or ramps, a **ONE WAY** sign visible to traffic on the entrance ramp should be placed on the side of the through roadway opposite to the entrance ramp. A **NO LEFT TURN** sign also may be placed along the right-hand side of the ramp just in advance of the entrance ramp terminal.

(3) **Divided Highways at grade intersection:**

(i) Where the roadways are separated by a median more than 30-feet wide,

ONE WAY signs should be visible to each crossroad approach on the near right-hand and far left-hand corners of each intersection with the expressway roadways. For lesser median widths their use is optional. The **ONE WAY** sign may be supplemented by a Turn Prohibition sign placed in the far right corner of the intersection.

(ii) A **DO NOT ENTER** sign should be placed on the right side of a divided highway roadway at a location to be directly in view of a driver making a wrong-way entry from the crossroad. A second **DO NOT ENTER** sign should also be placed on the left side of the divided highway roadway where the median width is 30 feet or more.

(iii) In addition, a **WRONG WAY** sign should be placed at one or more locations removed from the intersection along the right side of a roadway of a divided highway. A supplemental wrong-way sign should also be placed on the left side of a divided highway roadway at selected locations where the median width is 30 feet or greater.

(4) At locations which are determined to have a special need, other standard warning or prohibitive methods or devices may be used as a deterrent to the wrong-way movement.

§ 655.608 Pavement markings.

(a) *New or reconstructed Federal-aid highways.* The initial installation of permanent location pavement markings on new or reconstructed highways shall be classified as construction, and these costs are eligible for Federal-aid participation. The costs of application and removal of temporary striping which is necessary to handle traffic during construction and immediately following construction and prior to the placement of permanent striping are eligible for Federal-aid participation when included in the contract proposal or when performed by State forces at agreed unit prices.

(b) *Existing Federal-aid highways.* Federal-aid highway construction funds may be used for projects to improve or install markings on Federal-aid routes when such projects involve new work and when the work is construed to be construction rather than maintenance in nature. Federal-aid highway funds shall not be used for repainting or reinstalling pavement markings on existing highways where there was participation in the initial permanent striping nor shall these funds be used for restriping on

completed highways where the existing markings are in compliance with the MUTCD. Exception may be made in the installation of subsequent modified pavement markings on an existing highway when justification is furnished that would qualify the installation as a safety improvement project in accordance with 23 CFR Part 655, Subpart E, or when required for operational improvements under the TOPICS program in accordance with 23 CFR Part 655, Subpart A, or as an experimental project in accordance with the Federal-Aid Highway Program Manual, Vol. 6, Chapter 4, Section 2, Subsection 4.

(c) *Higher cost materials with Federal-aid funds.* (1) Justification is required for Federal-aid participation in pavement markings such as thermoplastic and cold-laid plastic having a higher initial cost than for other acceptable materials.

(2) In urban areas justification may be provided on a city wide basis rather than on a project-by-project basis.

(3) Appropriate use of raised reflective pavement markings is recommended on all new Interstate, other freeways, and other high speed highways where there are three or more through lanes in each direction.

(d) *Material and product selection.* The provisions of 23 CFR 1.22 shall apply to pavement marking materials of all types and their installation whenever Federal-aid highway funds are to participate in their costs. Consideration shall be given to the use of specifications which permit the use of a variety of equivalent materials and products to avoid the exclusive use of a patented or proprietary material, product, or application equipment in accordance with 23 CFR Part 635, Subparts A and B.

(e) *Interstate edge lines.* Edge line marking shall be mandatory on all sections of the Interstate System regardless of existing color contrast between the main line pavement and shoulder area. The cost of providing initial markings is eligible for Federal-aid Interstate participation. Any other changes in marking on the Interstate System as required by the MUTCD should be done under normal maintenance procedures and are not eligible for Federal-aid Interstate Participation.

(f) *Wrong-way traffic control.* In conjunction with corrective measures outlined in § 655.607(g) of this part, the

following pavement markings are listed to assist in the prevention of wrong-way movements. Federal-aid highway funds may be used to provide the improvements which are considered necessary by the Federal Highway Administration to assist in alleviating wrong-way movements.

(1) On two-lane paved crossroads adjacent to interchange exit ramp terminals a double line consisting of two normal solid yellow lines shall be used as a centerline for an adequate distance on both sides approaching the ramp intersections.

(2) In each lane of an exit ramp near the crossroad terminal, one or more arrow pavement markings also shall be placed at a location where it would clearly be in sight of a wrong-way driver. These markings can be made from traffic paint, thermoplastic material, bidirectional red and white raised markers or other units that show red to wrong-way drivers and white to other drivers. Additionally, symbol arrow pavement markings should be placed on the crossroad at appropriate locations near the ramp junction to indicate the permissive direction of flow.

(3) At appropriate locations on the entrance ramp and major road through traffic symbol arrow pavement markings may be placed to indicate the permissive direction of flow.

(4) On a divided highway, arrow pavement markings may be placed in each lane of each roadway in advance of a grade intersection and at other selected locations.

§ 655.609 Signals.

(a) *New or reconstructed Federal-aid highways.* Projects for construction of new highways or for major reconstruction of existing highways with participating Federal funds may include provisions for signals appropriate for the design and traffic requirements. Highway traffic signals may also be furnished and erected as a separate traffic control device project where the extent and importance of the work warrants separate project handling. Full compliance with the standards of the MUTCD shall be required on new projects. All newly constructed or reconstructed highways shall not be opened for unrestricted use by traffic until all appropriate traffic control devices, either temporary or permanent, are installed and functioning properly. When temporary traffic control devices are used they also shall comply with the

requirements of the MUTCD, and satisfactory arrangements for permanent signing must be made prior to final acceptance of construction projects. Federal funds may also participate in traffic control devices needed during the project construction period and these devices are to comply with the standards set forth in the MUTCD.

(b) *Existing Federal-aid highways.*

(1) Relocation, adjustment, or replacement of the signals on an existing highway may be undertaken as a separate traffic control device project even though the highway is not otherwise to be improved.

(2) Federal funds may participate in the costs incident to the movement or relocation of signal faces or to the provision of additional signal faces to conform with the location standards prescribed in the MUTCD when such work is part of an approved program for a traffic control project.

(3) All traffic and pedestrian signals, including school crossing signals, within the limits of a traffic control device project that do not conform to standards of the MUTCD shall be replaced or removed. In these instances, Federal funds may participate in the replacement and removal costs.

(4) If an intersection on a traffic control device project is without signals and one or more of the approved warrants set forth in the MUTCD is satisfied, Federal funds may participate at these locations to provide and install standard signals and control systems. Federal participation may also be extended to standardize or modernize existing traffic signals and control mechanisms along Federal-aid or other Federal highway routes either at isolated installations or for a series of signals when they are part of an approved traffic control device project. Federal funds may also participate in the cost of control mechanisms and installations on the Federal-aid routes that will permit the interconnection of signals on such routes with signals or controls on intersected highways, roads, and streets when economically feasible.

[39 FR 35650, Oct. 3, 1974; 39 FR 44746, Dec. 27, 1974]

§ 655.610 *Islands.*

Major reconstruction or channelization work at intersections and changes in street or highway cross sections to incorporate divisional islands (medians) shall be handled as a regular highway

construction or safety improvement project. Installation of new or adjustment of existing minor islands and other channelizing devices may be included as part of a traffic control device project when this work is incident to the installation of signs or signals and is needed for conformance with the standards of the MUTCD.

PART 656—CARPOOL DEMONSTRATION PROJECTS

Sec.

- 656.1 Purpose and scope of the rules in this part.
- 656.3 Eligibility.
- 656.5 Limitations on eligibility.
- 656.7 Procedures.
- 656.9 Availability of information.
- 656.11 Termination.

AUTHORITY: Sec. 3, Emergency Highway Energy Conservation Act, 87 Stat. 1046 (23 U.S.C. 315), delegation of authority by the Secretary of Transportation.

SOURCE: 39 FR 28628, Aug. 9, 1974, unless otherwise noted.

§ 656.1 Purpose and scope of the rules in this part.

The rules in this part prescribe the Federal Highway Administration's policies and procedures for administering the program of carpool demonstration projects. The objectives of the program are to conserve fuel, decrease traffic congestion during rush hours, improve air quality, and enhance the use of existing highways and parking facilities in urban areas.

§ 656.3 Eligibility.

Except as provided in § 656.5, Federal-aid funds apportioned for extensions of the Federal-aid primary and secondary systems in urban areas and for the Federal-aid urban system may pay 90 percent of the cost of carpool demonstration projects of the following types:

(a) Systems, whether manual or computerized, for locating potential participants in carpools or buspools and informing them of the opportunities for participation. Eligible costs for such a system may include costs of use or rental of computer hardware, costs of software, installation costs (including both labor and other related items), and reasonable public information and promotion expenditures, incurred until the system is fully developed and operational.

(b) Work necessary to designate existing highway lanes (whether or not the

highway is on a Federal-aid system) as preferential carpool lanes or bus and carpool lanes. Eligible costs for the work may include expenditures for preliminary engineering type of work to obtain traffic flow data and information about roadway features, and to develop a traffic flow model to determine the best carpool criterion for the specific highway. In addition, eligible costs may include the costs of required signing and marking, as well as minor physical modification to permit the use of designated lanes as preferential carpool lanes or bus and carpool lanes. The cost of providing the initial enforcement equipment, personnel costs, reasonable public information and promotion expenditures, and reimbursement for any actual losses in toll revenue occasioned solely by designating lanes on toll facilities, to assure the project is fully developed and operating properly, are also eligible. Proposals for reimbursement for actual losses in toll revenue which occur due to a reduction of the per-vehicle toll charge shall be treated as special cases and submitted to the Washington office for review prior to proceeding.

(c) Traffic control devices that are necessary to advise motorists and control the movement of carpools. Eligible costs would include expenditures for informational or directional signing and sensing equipment that responds to carpool vehicles, or carpool vehicles and buses when both use the facility.

(d) Signing of, and minor modifications to, publicly owned facilities to provide preferential parking for carpools. Eligible costs would include costs of trail blazers and on-site signs designating highway interchange areas or other publicly owned facilities as fringe parking for carpool participants. Reasonable public information and promotion expenditures, and reimbursement for any actual losses in income or additional costs occasioned by designating space for carpool vehicles, other than those resulting from a reduction of the per-vehicle user charge for parking, during the demonstration period are also eligible.

(e) The risk or "abort" cost of making commuter-driven vanpool service available. Eligible costs may include the difference between the initial cost of a reasonable number of commuter-driven vans (but not privately owned passenger cars or buses) and the residual value of the vehicles less the accumulated depreciation, if the demonstration project

is aborted prior to the agreed termination date of the demonstration project. Federal-aid funds may not participate in any form of operating subsidy. A user fee based on a reasonable number of riders per vehicle must be charged for the use of each van. The fee must cover the cost of reasonable vehicle depreciation, as well as its operating and maintenance costs. Normally, the duration of the guarantee of risk costs should not exceed the first 12 months of the project's operation.

§ 656.5 Limitations on eligibility.

(a) Federal-aid funds for carpool demonstration projects may not participate in the construction of new facilities, such as special highway lanes or parking areas for carpools, buses, or both.

(b) Federal-aid funds for carpool demonstration projects may not participate in projects which will encourage substantial numbers of persons who use mass transit to switch to carpools.

(c) The maximum amount of the Federal share for a single carpool demonstration project is \$1,000,000. There is no limit on the number of projects in a single State or urban area.

§ 656.7 Procedures.

(a) Each project or program of projects in an urbanized area must be initiated by, or have the concurrence of, the local organization which has responsibility for transportation planning in accordance with 23 U.S.C. 134. If this organization is not also the clearinghouse agency under OMB Circular A-95, notification of and consultation with that agency if necessary is also required. Each project or program or projects in an urban area having a population of less than 50,000 must have the concurrence of the mayor or chief administrative officer of the area.

(b) A project or program of projects must be submitted by the State highway department to the Federal Highway Administration Division Engineer for that State.

(c) Division Engineers are authorized to approve proposed carpool demonstration projects in accordance with the rules in this directive.

§ 656.9 Availability of information.

Before the Federal Highway Administration Division Engineer approves a demonstration project, he must find that the State is willing, and has the capability

ity to, provide information concerning the effectiveness of the project.

§ 656.11 Termination.

A carpool demonstration project may not be approved after December 31, 1975. [40 FR 3584, Jan. 23, 1975]

PART 657 [RESERVED]

PART 658—SPEED LIMITS

- Sec.
 658.1 Scope and purpose of the rules in this part.
 658.3 Definitions.
 658.5 Compliance with the Act.
 658.7 Exemptions.
 658.9 Statement of compliance.
 658.11 Federal reimbursement for sign modifications.
 658.13 Procedures for obtaining reimbursement for sign modification costs.
 658.15 Termination of the rules in this part.

AUTHORITY: Sec. 2, Emergency Highway Energy Conservation Act, 87 Stat. 1046, 23 U.S.C. 315, delegation of authority by the Secretary of Transportation.

SOURCE: 39 FR 3937, Jan. 31, 1974, unless otherwise noted.

§ 658.1 Scope and purpose of the rules in this part.

(a) *Scope.* The rules in this part implement section 2 of the Emergency Highway Energy Conservation Act, Pub. Law 93-239, enacted January 2, 1974. Section 2 of the Act requires States to take certain actions with respect to their highway speed limits as a condition to participation in the Federal-aid highway program.

(b) *Purpose.* The purpose of the rules in this part is to conserve fuel during periods of fuel shortage through establishment of national maximum speed limits.

§ 658.3 Definitions.

(a) *Act.* The term "Act" means section 2 of the Emergency Highway Energy Conservation Act, Pub. L. 93-239.

(b) *Highway.* The term "highway" includes all streets, roads, or parkways under the jurisdiction of a State or any of its political subdivisions and open for use by the general public. The term "highway" includes toll roads.

(c) *Motor vehicle.* The term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

(d) *State.* The term "State" means any one of the fifty States, the District of Columbia, and Puerto Rico.

§ 658.5 Compliance with the Act.

Except as provided in § 658.7, a State is in compliance with the Act if it has achieved the following objectives:

(a) The maximum speed limit on any highway in the State must be 55 miles per hour or less.

(b) The speed limit for all types of motor vehicles must be 55 miles per hour on any portion of a highway in the State which—

(1) has four or more traffic lanes; and

(2) has a physical barrier, other than pavement stripes or other markings, separating opposing lanes of traffic; and

(3) on November 1, 1973 had a speed limit of 55 miles per hour or more applicable to all types of motor vehicles.

If the speed limit on that portion of the highway for any type of vehicle or for all vehicles was less than 55 miles per hour on November 1, 1973, the speed limit may remain at that lower figure at the State's discretion.

(c) The speed limit on any portion of a highway in the State must be uniformly applicable to all types of motor vehicles if on November 1, 1973 that portion of a highway had a speed limit uniformly applicable to all types of motor vehicles. Nonuniform speed limits in existence on November 1, 1973 may remain in effect at the State's discretion so long as the maximum does not exceed 55 miles per hour.

§ 658.7 Exemptions.

(a) *Special permit vehicles.* Notwithstanding the provisions of paragraphs (a), (b), and (c) of § 658.5, a lower speed limit may be established for a motor vehicle operating under a special permit because of the weight or dimensions of the motor vehicle, including any load thereon.

(b) *Temporary hazardous conditions.* The rules in paragraphs (b) and (c) of § 658.5 do not apply to a portion of a highway during a time when the condition of the highway, weather, an accident, or other conditions (including construction or maintenance operations) create a temporary hazard to traffic safety.

(c) *Reduction of speed limits for safety.* After it has modified its speed limits in compliance with the rules in this part, a State may find that accident

frequency or potential requires reduction of the speed limit on a specific section of a highway subject to the rules in § 658.5(b). The State may reduce the speed limit on that section of the highway if it submits its justification and recommendation for the change to the Federal Highway Administration Division Engineer and receives his written approval of the reduction.

(d) *Emergency and police vehicles.* The rules in § 658.5 do not prevent a State from authorizing the operation of emergency and police motor vehicles at a rate of speed higher than the speed limit for other motor vehicles when that operation is necessary to protect health or safety.

§ 658.9 Statement of compliance.

(a) *Contents of certificate.* Each State shall furnish the Federal Highway Administration Division Engineer with a statement that it has complied with the Act. The statement shall include—

(1) A description of the action taken by the Governor, State legislature, or other appropriate official or agency to implement the Act;

(2) an opinion of the State's legal counsel that the action taken is lawful in cases where the action is not based on a specific, cited provision of State statute or the State's constitution (such as the State's assent law); and

(3) a statement that speed limit signs have been changed when necessary to reflect modifications in speed limits required by the Act.

(b) *Effect of stated action.* Administrative action lawfully taken by a Governor or other appropriate State official in compliance with the Act and as specified in the State's statement shall be deemed to place the State in compliance with the Act.

(c) *Effect of failure to furnish statement.* After March 3, 1974, a Federal Highway Administration Division Engineer shall not approve plans, specifications, and estimates submitted by a State or authorize the State to advertise for bids for construction if the State has not furnished him with a statement that conforms to the rules in paragraph (a) of this section.

§ 658.11 Federal reimbursement for sign modifications.

(a) *Availability of funds.* Federal-aid highway funds apportioned to a State under 23 U.S.C. 104 are available to pay

100% of the eligible cost of modifying the signing on Federal-aid highway systems to carry out the intent of the Act.

(b) *Eligible costs.* Any costs incurred by a State after November 1, 1973 for modifying speed limit signs are eligible for participation even though the project was not programmed before the work was done. Eligible costs will normally be limited to the costs of changing the numerals on speed limit signs to reflect a new speed limit.

§ 658.13 Procedures for obtaining reimbursement for sign modification costs.

To simplify and expedite payment of the cost of modifying signs to carry out the Act, the following procedures for obtaining Federal-aid highway funds are authorized:

(a) States should submit a single statewide project for each Federal-aid system. The Federal Highway Administrator has found that it is in the public interest to permit sign modification work to carry out the Act to be performed by force account.

(b) A complete PS&E submission is not required. Each State must prepare and submit a cost estimate to permit the development of a project agreement.

(c) The Federal Highway Administration will accept simplified cost records. The development and use of an average cost-per-sign figure will be acceptable for cost reimbursement purposes.

§ 658.15 Termination of the rules in this part.

The rules in this part cease to be in effect on and after the date the President declares that there is no fuel shortage requiring the application of the Act or on and after June 30, 1975, whichever date first occurs.

PART 659 [RESERVED]

PART 660—SPECIAL PROGRAMS (DIRECT FEDERAL)¹

Subpart A—Regulations for Administering Forest Highways

- | | |
|-------|--|
| Sec. | |
| 660.1 | Definitions. |
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¹ Redesignated at 39 FR 10430, Mar. 20, 1974.

- Sec.
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Subpart A—Regulations for Administering Forest Highways

AUTHORITY: Subpart A issued under 72 Stat. 907, sec. 6, 80 Stat. 937; 23 U.S.C. 204, 49 U.S.C. 1655 and the del. of auth. by the Sec'y of Transportation, 49 CFR 1.48(b) (1).

SOURCE: The provisions of this Subpart A appear at 36 FR 20221, Oct. 19, 1971, unless otherwise noted. Redesignated at 39 FR 10430, Mar. 20, 1974.

§ 660.1 Definitions.

(a) *Administrator.* The Federal Highway Administrator, Department of Transportation.

(b) *Chief.* The Chief of the Forest Service, Department of Agriculture.

(c) *State.* Any State or insular possession eligible to receive forest highway funds.

(d) *State Highway Department.* That department, commission, board or officials of any State charged by its law with the responsibility of highway construction.

(e) *County.* Any local government unit vested with jurisdiction over local highways including corresponding units of government under any other name in States which do not have county organizations.

(f) *Cooperator.* The State highway department or county as previously defined.

(g) *Regional administrator.* The Regional Federal Highway Administrator of the Federal Highway Administration.

(h) *Division engineer.* The division engineer of the Federal Highway Administration.

(i) *Regional forester.* The regional forester of the Forest Service.

(j) *Federal-aid highway.* A highway located on one of the Federal-aid systems.

(k) *Federal-aid systems.* Those systems as described in 23 U.S.C. 103.

(l) *Forest roads.* Roads wholly or partly within or adjacent to and serving the national forest and other areas administered by the Forest Service.

(m) *Forest highway.* A forest road which is of primary importance to the States, counties, or communities within, adjoining, or adjacent to the national forest, and which is on a Federal-aid system.

(n) *Forest highway fund.* Any authorization or appropriation of Federal funds for forest highways either from the general fund of the Treasury or the Highway Trust fund.

(o) *Forest highway program.* Those forest highway projects for surveys, right-of-way acquisition, construction, and maintenance scheduled to be accomplished within the limit of available authorizations or appropriations and formally approved by the Administrator and the Chief or their duly authorized representatives.

(p) *Construction.* The supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the Coast and Geodetic Survey in the Department of Commerce), acquisition of rights-of-way, relocation assistance, elimination of hazards of railway grade crossings, acquisition of replacement housing sites, and acquisition, and rehabilitation, relocation, and construction of replacement housing, adjacent vehicular parking areas, and sanitary, water, and fire control facilities.

(q) *Highway planning survey.* The engineering and economic investigations of highways and highway transportation conducted by the highway departments of the States and the Federal Highway Administration.

(r) *Maintenance.* The preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization, and of adjacent vehicular parking areas and sanitary, water, and fire control facilities.

§ 660.2 Apportionment.

On or before January 1, of each year, the Secretary of Transportation shall apportion among the States the forest highway funds authorized for the next succeeding fiscal year as follows:

(a) In the same percentage as the amounts apportioned for forest highways for the fiscal year ending June 30, 1958, which percentage is based upon a determination of the area and value of the land owned by the United States within the national forests, as certified to the Secretary of Commerce by the Secretary of Agriculture as of June 30, 1955.

(b) Ten percent of the amount so apportioned to each State shall be placed in a reserve and the balance shall be made available, immediately after apportionment, for the forest highway program. Reductions will be made from the reserve to cover administrative requirements of the Federal Highway Administration including purchase of equipment, administration by the Forest Service and, in special cases, to provide additional funds for programed projects. Any balances in the reserve will be released for programing not later than the date of the apportionment of the succeeding fiscal year authorization.

§ 660.3 The forest highway system.

(a) The forest highway system shall comprise those roads defined under § 660.1(m).

(b) Forest highways shall be classified as follows:

Class 1. On the Federal-aid primary system (Includes Interstate).

Class 2. On the Federal-aid secondary system.

(c) Proposed modifications, when jointly agreed upon and recommended by the State highway department, regional forester, division engineer and regional administrator, shall be forwarded, together with necessary supporting data including revised sketch maps and route descriptions to the Administrator and the Chief for approval.

§ 660.4 The forest highway program.

(a) For each apportionment of funds authorized by Congress for forest highways, the division engineer shall request the State highway department to submit a list of forest highway projects proposed for financing with such funds, supported by a map showing the location of such projects. Included therein shall

be those projects proposed by counties, other political subdivisions, or agencies together with the State highway department's recommendation thereon, also supported by a map showing the location of those projects. Copies of these data shall be furnished the regional administrator who shall furnish a copy to the regional forester. The regional administrator shall make any investigations necessary to obtain further information on any projects proposed for financing with each annual apportionment.

(b) Following receipt of the maps, list of projects and recommendations required by paragraph (a) of this section the regional administrator shall arrange for a joint conference with the State highway department, the regional forester and the division engineer for final consideration of projects to be included in the program to be financed with funds currently authorized, and for consideration of a planning program of other projects in priority order to be included in one or more subsequent annual programs. For those States where the annual apportionment of forest highway funds is less than \$500,000 the consideration of projects to be included in a program may be accomplished by correspondence if such procedure is agreed upon by the above parties. Projects included in the forest highway program shall be based upon the following considerations:

(1) The completion of necessary surveys.

(2) Findings of the highway planning survey.

(3) Benefit to protection, development, management, and multiple use of the national forest.

(4) Construction correlation with military requirements and with adjacent Federal and State road programs.

(5) The economy of continuity of operations.

(6) Ability of cooperators to adequately maintain the improvement.

(7) Provision for the maintenance of forest highways existing or under construction.

(c) A joint report of the conference, or conclusion reached by correspondence, and a recommended program of projects to be financed with currently available funds shall be prepared and submitted to the Administrator and the Chief or their duly authorized representatives for approval. The report of the planning program as agreed upon shall be submitted

to the Administrator and the Chief for record purposes.

(d) The program amount for any project may be increased by the Administrator or his duly authorized representative by an amount not to exceed 25 percent. The additional funds required in connection with cost increases shall be obtained from the unprogramed balance or in special cases, from the reserve. A construction project substantially deviating from the project as approved in the program or for which the cost will exceed by more than 25 percent the amount as authorized therein, shall constitute a major program revision to be approved by the Administrator and Chief or their duly authorized representative.

§ 660.5 Cooperative agreements and project agreements.

(a) A cooperative agreement, statewide, route or project type shall be entered into between the Federal Highway Administration and each State highway department or county having jurisdiction. Such agreement shall be entered into prior to advertising, authorization to advertise or authorization to proceed by force account. Negotiations for cooperative agreements shall be conducted by the regional administrator or his duly authorized representative. Approval of the cooperative agreement shall be by the Administrator.

(b) A project agreement implementing the cooperative agreement shall be entered into under the following conditions:

(1) Cooperator's funds are to be made available to the Federal Highway Administration for the work.

(2) Federal funds are to be made available on a reimbursable basis to the cooperator for the work.

(3) Special circumstances exist which make a project agreement necessary for other payment purposes or to clarify any aspect of the approved program. The implementing project agreement required for those projects supervised by the State shall be entered into as soon as practicable following approval of the plans, specifications, and estimate. The division engineer shall conduct negotiations for and approve such project agreements. Negotiations for and approval of project agreements for projects under Federal Highway Administration supervision shall be in accordance with delegated authority. Payment of the reimbursable Federal share of funds shall not

be made in the absence of an executed project agreement.

§ 660.6 Surveys.

(a) Surveys, and the preparation of construction plans, specifications and cost estimates, may be made for any improvement that is to be considered for inclusion in a future forest highway program. Such surveys may be made on routes that ultimately may become a part of the forest highway system as well as present forest highway routes.

(b) Before the completion of a survey, the regional forester shall be notified in writing so that he shall have the opportunity to examine the surveyed line or the location map and to indicate any details of location desirable for the protection, development or multiple use of the national forest.

(c) Before the completion of a survey undertaken by the Federal Highway Administration for a project to be constructed under its supervision the cooperator shall be notified in writing and shall have opportunity to examine the surveyed line or the location map to indicate any details of location desirable from the standpoint of the operation and maintenance of the highway. Opportunity also shall be provided the cooperator to examine the plans, specifications and estimate before the project is advertised for bids.

§ 660.7 Construction.

(a) No construction shall be undertaken upon any designated part of the forest highway system until 23 U.S.C. 128 has been complied with and a survey and cost estimate have been approved by the regional administrator and the State highway department, unless specifically authorized by the Administrator. The Forest Service may, however, at its expense make temporary repairs on forest highways or construct utilization roads on the forest highway system. Such temporary repairs and construction of utilization roads shall follow as closely as practicable surveys made or authorized by the Federal Highway Administration at the request of the Forest Service.

(b) Approval of plans, specifications and estimates shall be by the regional administrator.

(c) Upon fulfillment of the requirements set forth in these regulations, projects included in the approved forest highway program may be advertised for bids if within the limit of funds available for obligation.

(d) The construction of forest highways will be performed by the contract method unless, as prescribed in 23 U.S.C. 204(c), the estimated cost exclusive of bridges is less than \$5,000 per mile or after proper advertising no acceptable bid is received or the bids are deemed excessive in which event the Administrator may construct on his own account.

(e) Construction work on any project shall not be considered as completed until the project has been inspected and approved by the cooperating agency and the regional administrator or his duly authorized representative, nor until the regional forester has approved the clearing and disposal of refuse.

§ 660.8 Maintenance.

Maintenance of completed forest highway projects shall be the responsibility of the cooperating agency unless otherwise provided in a formally approved cooperative agreement.

§ 660.9 Records and accounting.

(a) The Administrator shall keep all forest highway records which he deems necessary of survey, right-of-way acquisition, construction, and maintenance costs for projects under his supervision.

(b) Records for forest highway projects constructed under State supervision shall be maintained by the State in the same manner as those required for Federal-aid projects by the regulations for the administration of Federal-aid for highways.

(c) Equipment depots under the jurisdiction of the Federal Highway Administration shall be operated on a self-sustaining basis. Work done in equipment depots will be charged on an actual cost basis, including overhead. Projects on which equipment is used will be charged with the cost of such equipment on a depreciation or appropriate rental basis.

(d) Cooperative funds provided by any cooperator in advance shall be deposited in the Treasury of the United States to the credit of "Cooperative Work, Forest Highways, Federal Highway Administration." If cooperative funds are to be made available on a reimbursable basis, the Federal Highway Administration will bill the cooperator either on completion of the project or as the work progresses, in accordance with the terms of the project agreement.

§ 660.10 Administrator's report.

Not later than December 15 of each year, the Administrator shall submit to the Secretary of Transportation and to the Secretary of Agriculture a report covering the operations on the forest highway system for the preceding fiscal year, including the current status of surveys, construction and maintenance, and with such recommendations as he shall consider desirable.

§ 660.11 Application of regulations.

The regulations in this part shall become effective on the date of its publication in the *FEDERAL REGISTER* and shall supersede all prior rules and regulations heretofore in effect for administering forest highways.

Subpart B—Forest Highway Systems

AUTHORITY: 23 U.S.C. 204, 315; 49 CFR 1.48(b).

SOURCE: 39 FR 36333, Oct. 9, 1974, unless otherwise noted.

§ 660.201 Purpose.

The purpose of this subpart is to prescribe policies and procedures with respect to Forest Highway Systems in coordination with 23 CFR, Part 660, Subpart A.

§ 660.203 System and classes

(a) The Forest Highway System is composed of Forest Roads which have been designated as Forest Highways.

(b) There are two classes of Forest Highways:

(1) Class 1 must be on the Federal-aid primary system (includes Interstate).

(2) Class 2 must be on the Federal-aid secondary system.

§ 660.205 System numbering.

Each Forest Highway route is to be designated by number and name. The numbering is to be consecutive within each State and no number is to be used more than once within each State. All other road system designations and numbers are to be disregarded in numbering Forest Highway routes. The route name is to be either the generally accepted local name, or the names of communities located near the termini of the route.

§ 660.207 System mileage.

Mileage of routes will be determined for record as follows:

(a) Measured to the nearest one-tenth mile for sections having a travelable road.

(b) Estimated to the nearest whole mile for sections not have a travelable road.

(c) Where mileage of a Forest Highway is divided into more than one classification, the termini of each class are to be described and the corresponding mileage is to be given.

§ 660.209 System modifications—major.

(a) A major modification to the Forest Highway System is the addition of a proposed route, the deletion of an approved route, or a substantial change in the termini, length, or intermediate location between approved termini. A substantial change in length is considered to be a change of one mile or more.

(b) A major modification to the Forest Highway System may be proposed by the State highway department, the Regional Forester, or the Division Engineer. When the proposed major modification has been agreed upon by the State highway department, the Regional Forester, the Regional Federal Highway Administrator, and the Division Engineer, their joint recommendation shall be submitted to the Federal Highway Administrator and the Chief of the Forest Service (FS) for approval.

(c) The joint recommendation for a major modification shall be submitted in letter form and shall include at least the following: forest highway route number, highway name, location description, approximate length, class, highway number (F.A., State, or U.S.), and a summary of the mileage of the system including the changes recommended in the joint recommendation.

§ 660.211 System modifications—minor.

(a) A minor modification is any change other than a major modification, including changes in classification brought about by Federal-aid systems changes. Minor modifications may be proposed by the State highway department, the Regional Forester, or the Division Engineer. When the proposed minor modification has been agreed upon by the State highway department, the Regional Forester, and the Division Engineer, the Division Engineer may approve the proposal.

(b) The approved minor modification shall be submitted in letter form and shall include, in addition to a statement of justification and appropriate maps, at least the following: forest highway route number, highway name, location description, approximate length, class, highway number (F.A., State, or U.S.), and a summary of the mileage of the system including the changes recommended in the joint recommendation.

§ 660.213 System reporting.

Not later than July 15 of each year, a listing of the approved Forest Highway system as of June 30 shall be submitted by the State highway department. A mileage summary by class shall be shown on this listing.

Subpart C—Public Lands Highway Funds

AUTHORITY: 23 U.S.C. §§ 101(a), 202(c), 209, and 315; (49 CFR 1.48(b)).

SOURCE: 39 FR 30930, Aug. 27, 1974, unless otherwise noted.

§ 660.301 Purpose.

The purpose of this subpart is to outline the procedure to be followed in the administering of funds authorized for Public Lands Highways. Funds authorized for Public Lands Highways shall be available for the survey, construction, reconstruction and maintenance of main roads through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations, on the basis of need as determined by the Federal Highway Administrator (hereinafter the "Administrator") upon application by the highway departments of those States in which these public lands, Indian lands, or other Federal reservations are located. Public Lands Highways must be located on a Federal-aid system.

§ 660.302 Determination of Need Priority.

(a) To permit proper determination of the priority to be assigned to each project proposed by the interested States for use of the Public Lands funds authorized for a particular fiscal year, information will be furnished for each project concerning the type and condition of the existing highway and:

(1) Actual or potential traffic requirements;

(2) The relation of the project to the adequate development of a complete section that will serve through traffic;

(3) Providing transportation of food products or of workers and materials to production plants;

(4) Service to installations important to the national defense; and

(5) The lack of other funds to accomplish the improvement in a reasonable period of time.

§ 660.303 Applications.

Each interested State should submit to the Federal Highway Administration early in each calendar year any requests it may have for improvements to be considered for financing with the Public Lands funds authorized for the next fiscal year. Such requests shall be supported by all of the pertinent information enumerated in § 660.302 together with a map of the general area, showing the location of proposed improvements.

§ 660.304 Allotment of Public Lands Funds.

All requests received will be analyzed and compared. On the basis of this analysis the Administrator will determine which improvements are to be approved and the amount of available Public Lands funds to be allotted in each case.

§ 660.305 Programming.

(a) Following receipt of notification of the improvements selected by the Administrator, the affected State highway departments shall prepare the usual documents in each case for the programming of a project to cover the selected improvement, or the initial portion thereof, that can be accomplished with the amount of Public Lands funds allotted for that improvement.

(b) The approval of the program of an authorized Public Lands funds project, and the subsequent processing of the plans, specifications and estimates will be the same as for a regular Federal-aid project.

§ 660.306 Method of construction.

Public Lands funds projects may be constructed by the State highway departments in accordance with the Federal-Aid Highway Regulations and the policies and procedures applicable to regular Federal-aid primary projects; or they may be constructed by FHWA in accordance with the procedures govern-

ing Forest Highway projects. The method chosen in each case will be determined by agreement between the State and FHWA.

PARTS 661—664 [RESERVED]

PART 665—DIRECTIONAL SIGNING FOR AMERICAN REVOLUTION BICENTENNIAL ACTIVITIES

Sec.

665.1 Purpose.

665.2 Definitions.

665.3 Background.

665.4 Funding.

665.5 Signing standards.

AUTHORITY: 23 U.S.C. 109(d), 402(a), and 49 CFR 1.48(b).

SOURCE: 39 FR 30930, Aug. 27, 1974, unless otherwise noted.

§ 665.1 Purpose.

The purpose of this part is to establish policies and guidelines for the design and installation of highway signs incorporating a uniform Bicentennial symbol, and to establish the limits of participation of Federal-aid highway funds in providing additional destination information and guidance to activities related to the American Revolution Bicentennial.

§ 665.2 Definitions.

(a) The terms used in this part shall be defined in accordance with the definitions and usage of the Manual on Uniform Traffic Control Devices, 1971 edition.¹

(b) The term "Bicentennial" as used herein refers to the American Revolution Bicentennial.

(c) The term "State" means any one of the 50 States, territories, the District of Columbia, or the Commonwealth of Puerto Rico.

§ 665.3 Background.

In recognition of the need to identify the location of Bicentennial activities, the Federal Highway Administration, in cooperation with the American Revolution Bicentennial Administration, has authorized the use of the official Bicentennial symbol on guide signs and trailblazers.

¹ The Manual on Uniform Traffic Control Devices (Stock Number 5001-00021) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

§ 665.4 Funding.

(a) In order to be eligible for Federal-aid participation, Bicentennial signing:

(1) Shall conform to the standards of section 665.5 of this part;

(2) Shall be installed within the right-of-way, including rest areas, of highways on the Federal-aid system;

(3) Shall be used to guide highway users to destinations approved by the State Bicentennial Commissions, including destinations associated with programs accorded Official Recognition by the American Revolution Bicentennial Administration;

(4) Shall not be used on ground mounted gore signs;

(5) Shall have supports of the break-away or yielding type on new installations; and

(6) Shall be installed on or before July 1, 1976, and removed on or before June 30, 1977.

(b) Removal costs shall not be eligible for Federal participation.

(c) Interstate funds may be used for Bicentennial signing on the Interstate System. The remaining classes of Federal-aid highway funds may be used for such signing on their respective systems and extensions.

§ 665.5 Signing standards.

The following standards shall apply to all Bicentennial signing used on all streets and highways open to public travel:

(a) *Bicentennial Symbol.* (1) Only the official symbol as approved by the American Revolution Bicentennial Administration for highway use^{*} shall be used, except that the symbols previously approved and sanctioned for use in Boston, New York City, Philadelphia, and Washington, D.C., may be used in their respective areas as an alternate.

(2) The symbol shall be reflectorized and should be reproduced in Bicentennial red, Bicentennial blue, and white. Highway red (PR Color No. 2) and Highway blue (PR Color No. 3) are considered appropriate for color purposes. The red light limit V+ and the blue strong limit C+ are the optimum colors for use. Visual color matching is acceptable.

^{*} Illustrated in Vol. 6, Ch. 8, Sec. 3, Subsec. 7, Attachment 1 of the Federal-Aid Highway Program Manual, which is available for inspection and copying as prescribed in 49 CFR Part 7, App. D.

(3) The symbol must always be used in conjunction with the reflectorized white background. There shall be no legend placed within the background area.

(4) When used with a guide sign, the maximum dimension of the symbol should not exceed the height of the capital letters nor be less than the loop height of the lowercase letters of the Bicentennial destination.

(5) When used with a trailblazer, the maximum dimension of the symbol shall not exceed 12 inches.

(6) The symbol may be displayed separately on a special panel which should provide a minimum of a 3-inch-wide space around the symbol. The panel shall be of the same background color as the sign to which it is attached.

(7) The symbol shall always be oriented so that two points of the star shall point downward, and when the two points are connected by an imaginary line, the line shall be parallel to the horizontal edge of the sign panel.

(b) *Guide Signs.* (1) New supplemental guide signs for Bicentennial activities shall have reflectorized white letters, symbols, and border on a brown background with the Bicentennial symbol in the upper left quadrant. The format and installation of these signs shall otherwise conform to the provisions of the Manual on Uniform Traffic Control Devices except that:

(i) Sign spacing requirements have been waived.

(ii) The limitation on the number of destinations that may be included on a specific sign has been waived for those conditions where multiple activities or destinations are included in a small area.

(2) When used with existing guide signs, the Bicentennial Symbol shall normally be placed to the left of and above the initial letters of the Bicentennial destination.

(c) *Trailblazers.*

(1) Trailblazers for Bicentennial activities shall conform to the provisions of the Manual on Uniform Traffic Control Devices except that:

(i) The use of the TO marker, the cardinal direction marker, and the route marker shall be optional. Panels displaying Bicentennial destinations may be included.

(ii) The Bicentennial symbol shall be included in the assembly, either on a separate panel, or in the upper left quad-

rant of the primary panel in the assembly.

(iii) The Bicentennial symbol shall not be placed on a route marker.

(2) Bicentennial destination panels for trailblazers shall have reflectorized

white letters, symbols and border on a brown background. The maximum height of uppercase letters shall not exceed 8 inches.

PARTS 666—699 [RESERVED]

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PARTS 700—709 [RESERVED]

PART 710—RIGHT-OF-WAY—GENERAL

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AUTHORITY: (23 U.S.C. 315, 42 U.S.C. 4601 et seq.), 49 CFR Part 25, 23 CFR 1.4, 23 CFR 1.32, (42 U.S.C. 2000d et seq.), Executive Orders 11246, 11247, and 11375, 49 CFR Part 21.

SOURCE: 39 FR 26416, July 19, 1974, unless otherwise noted.

Subpart A—General Policy

§ 710.101 Purpose.

(a) To prescribe the general policy of the Federal Highway Administration (FHWA) pertinent to the acquisition of real property for highway and related purposes.

(b) To define some fundamental terms used in FHWA right-of-way acquisition directives.

§ 710.102 Applicability.

The provisions of this subpart are applicable to all States and political sub-

divisions thereof in the acquisition of real property for any highway or highway related project in which Federal funds will participate in any part of the cost of the project.

§ 710.103 Policy.

It is the policy of the FHWA to encourage and cooperate with the States to expedite the acquisition of real property by agreement, to avoid litigation and relieve congestion in the courts, to assure consistent, equitable treatment of owners of property acquired for Federal and Federal-aid highway programs, and to promote public confidence in land acquisition practices related to those programs.

§ 710.104 Definitions.

(a) *FHWA.* The Federal Highway Administration.

(b) *State.* Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and the Trust Territory of the Pacific Islands.

(c) *State Highway Department (SHD).* That department, commission, board or official of any State charged by its laws with the responsibility for highway construction.

(d) *Acquiring Agency.* (1) The State highway department, or

(2) Another State agency, or

(3) A political subdivision of the State, or

(4) The Federal Highway Administration.

(e) *To the Greatest Extent Practicable Under State Law.* For the purpose of implementing Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.), "to the greatest extent practicable under State law" means if permitted by State law.

(f) *Initiation of Negotiations for the Parcel.* The date the acquiring agency makes the first personal contact with the owner, or his designated representative, of the parcel or property to be acquired

for a Federal or Federal-aid project, where price is discussed.

(g) *Uneconomic Remnant*. A remaining part of land, after a partial acquisition, that is of little or no utility or value to the owner.

(h) *Public Sale*. To offer for sale to the general public, either by sealed bid, public auction, or other method whereby the general public is given an opportunity to purchase under open, competitive conditions.

(i) *Right-of-Way Activities*. Those activities, including the acquisition of rights-of-way and relocation assistance, involved in providing right-of-way for Federal or federally assisted projects.

[39 FR 26416, July 19, 1974; 39 FR 45215, Dec. 31, 1974]

Subpart B—State Highway Department Responsibilities

§ 710.201 Purpose.

(a) To prescribe the general responsibility of a State highway department (SHD) relative to acquisition of rights-of-way for the Federal-aid highway systems.

(b) To provide for the submission of assurances by each SHD relative to Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.).

(c) To prescribe the requirements for the preparation of an operational right-of-way manual by each SHD.

(d) To provide for the submission of an annual report by each SHD on its real property acquisition for Federal and federally assisted highway programs and projects.

§ 710.202 Applicability.

The provisions of this subpart are applicable to all States which receive Federal financial assistance in connection with the Federal-aid highway program.

§ 710.203 General responsibilities.

(a) *Acquisition*. The SHD has overall responsibility for the acquisition of right-of-way on all Federal-aid highway systems.

(b) *Right-of-Way Organization*. Each SHD shall have a right-of-way organization adequately staffed, equipped, and organized to discharge its right-of-way responsibilities.

(c) *Use of Other Public Right-of-Way Organizations*. The SHD may, by means of a written agreement, use the services of land acquisition organizations of

counties, municipalities, or other State or local governmental agencies for acquiring rights-of-way for Federal-aid projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services and if its practices and procedures are in substantial conformity with the SHD's accepted procedures or it will follow the SHD's accepted procedures. It is the responsibility of the SHD to fully inform political subdivisions of their responsibilities in connection with federally assisted highway projects. The SHD shall monitor real property acquisition activities conducted by political subdivisions to ascertain that right-of-way is acquired in accordance with provisions of State and Federal laws and as required by Federal Highway Administration (FHWA) directives.

(d) *Adequacy of Right-of-Way*. The interest acquired in all rights-of-way for Federal-aid highways shall be adequate for the construction, operation, and maintenance of the highway and for the protection of both the transportation facilities and the traveling public.

§ 710.204 Title III assurances.

(a) Each SHD shall submit to FHWA the assurances required by section 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4655).

(b) Unless statewide assurances that are acceptable to FHWA have been received, FHWA may not authorize:

(1) A State to proceed on any Federal-aid project with work which will result in an acquisition of an interest in real property, or

(2) Any federally assisted construction work to proceed on any rights-of-way acquired without Federal participation.

(c) The required assurances are:

(1) To the greatest extent practicable under State law, it will be guided in acquiring real property by the land acquisition policies in section 301 (42 U.S.C. 4651) and the provisions of section 302 (42 U.S.C. 4652), and

(2) Property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 (42 U.S.C. 4653-4654).

(d) Compliance with the provisions of sections 303 and 304 is mandatory.

(e) In the event a SHD maintains that it is legally unable to comply with any provision of section 301 or 302, it shall

submit an opinion from the chief SHD legal officer, or other appropriate legal officer setting forth citations to the statutes, or other established legal authority which would prevent such compliance. In the absence of such legal opinion, the SHD shall be expected to comply with the provisions of sections 301 and 302.

(f) Assurances accepted by FHWA prior to the issuance of this directive remain in force. Revised assurances shall be submitted to FHWA if previously accepted assurances are affected by changes in State law.

§ 710.205 Right-of-way manuals.

(a) Each SHD shall submit in duplicate to FHWA for acceptance a manual which clearly describes the SHD's right-of-way organization and the policies, procedures, and practices it will follow where right-of-way is acquired for Federal-aid highway projects.

(b) In general, the manual should be developed for the SHD's internal use and be designed to assist SHD right-of-way personnel in complying with both State and Federal laws, regulations, directives and standards. The manual must be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished. It should be in sufficient depth to guide the operating right-of-way employee in how he is to perform his assigned duties. All phases of the acquisition program shall be covered.

(c) The SHD may use a format that meets its own needs.

(d) Until the SHD's manual is accepted under the provisions of this subpart, previously accepted policy and procedure statements currently applicable will remain in effect.

(e) The SHD is responsible for full compliance with FHWA requirements whether or not its manual currently reflects proper coverage of the requirements. Changes to a manual, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for acceptance within a reasonable period of time. FHWA approval of manual changes is not required prior to implementation by the SHD. In-house administrative type manual changes should be transmitted to FHWA for informational purposes.

§ 710.206 Real property acquisition report.

(a) For each fiscal year ending June 30, each SHD shall submit an annual report of its real property acquisitions for Federal and federally assisted highway programs. The report shall consist of:

(1) Statistical data. The statistical portion of the report shall include separate reports by highway systems, on Form FHWA-1434 (RCS HRW-10-07), for the total of all Federal and federally assisted highway program acquisitions. Acquisitions undertaken with only State or other funding shall not be reported.

(2) Narrative comments. The SHD should offer comment when significant actions have been accomplished, are contemplated or underway, or when otherwise appropriate, on the following items:

(i) A description of the actions taken by the SHD to establish uniform and equitable land acquisition policies for federally assisted highway programs.

(ii) The positive action plans, such as the preparation and promulgation of implementing rules and regulations, undertaken by the SHD to achieve uniform and equitable treatment for all persons having real property acquired for federally assisted highway programs.

(iii) The staffing and training performed and projections of staffing requirements and training programs required for the continuous administration of consistent, uniform and equitable treatment of owners from whom real property is acquired for federally assisted highway programs at the State, county, and city levels, as appropriate.

(iv) The provisions adopted by the SHD for coordination with Federal, other State, and local acquisition agencies.

(v) The progress of the SHD in implementing the provisions of 42 U.S.C. 4651-4655 (Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), including its success, its problems, and the adverse effects, if any, on acquisition programs it conducts or administers.

(vi) The SHD's recommendations for further improvement in land acquisition programs and policies, and implementing laws and regulations, including any proposals for amendments or revisions to:

(a) Federal guidelines,

- (b) Other agencies' regulations,
- (c) Federal legislation, and
- (d) State legislation.

(b) Annual reports are due in the Washington office of FHWA not later than August 1.

Subpart C—Reimbursement Provisions

§ 710.301 Purpose.

To set forth provisions governing reimbursement to a State highway department (SHD) for right-of-way costs incurred in connection with a Federal or Federal-aid highway project.

§ 710.302 Applicability.

The provisions of this subpart are applicable to all State claims for Federal-aid right-of-way reimbursement.

§ 710.303 Reimbursement requirements and limitations.

Participation in right-of-way costs incurred by the SHD for highway or highway related projects shall be under the circumstances and to the extent set forth below:

(a) When there has been approval of a program and the SHD has been authorized to proceed with right-of-way activities and, after the effective date of the authorization, the SHD legally obligates itself under State law to pay right-of-way costs.

(b) When costs are incurred in conformity with State law and Federal Highway Administration (FHWA) directives.

(c) When costs are recognized and recorded as an obligation in the accounts of the SHD.

(d) Federal-aid participation may not exceed the statutory limitation for the particular Federal-aid funds used.

(e) On projects financed under 23 U.S.C. 120(d) for the elimination of hazards of railway-highway crossings, participation in the right-of-way cost may not exceed 70 percent, with no increase in public land States.

(f) On public land highways and on defense access roads as defined in Title 23 U.S.C. 101a and 210, the extent of Federal participation will be in accordance with specific agreements between FHWA and the SHD.

(g) Reimbursement of costs shall be made only after the project agreement has been executed.

§ 710.304 Reimbursement policy.

(a) *Real Property Acquisition.* Federal funds may participate in payments made by the SHD for real property or interests therein acquired in accordance with applicable State and Federal law and FHWA directives. Unless otherwise provided, Federal funds may not participate in the costs of real property not incorporated into the final highway right-of-way.

(b) *Incidental Expenses.* (1) Federal funds may participate in any expenditure of a type normal to the operation of the SHD and incidental to the acquisition of rights-of-way, whether the acquisition is by negotiation or condemnation.

(2) Federal participation will not be allowed in charges for the administrative and overhead expenses of either the headquarters or field offices of the SHD or other publicly maintained land acquisition organizations. When a supervisory or administrative employee is engaged in work chargeable to a specific project, Federal participation may be allowed in claims for salary and related expenses on that project in accordance with Volume 1, Chapter 4, Section 5, of the Federal-Aid Highway Program Manual.

(3) Federal funds may participate in the usual costs and disbursements chargeable to a condemning authority under State law as part of a valid bill of costs approved by a court in a condemnation proceeding. However, whether or not the costs are included in court judgments or awarded as court costs in litigated cases, Federal participation will not be permitted in the cost of a property owner's attorney fees, appraiser fees, expert witness fees, or similar costs which are paid by the SHD in connection with acquisition of rights-of-way, with the following exceptions:

(i) Where the final judgment is that the property cannot be acquired by condemnation, or

(ii) The proceeding is abandoned by the acquiring agency, or

(iii) An inverse condemnation proceeding is successfully maintained.

In any of the foregoing exceptions, participation will be limited to such sum as will in the opinion of the court or the head of the agency on whose behalf the proceeding was instituted, reimburse the owner for reasonable costs, disburse-

ments, and expenses he actually incurred, including reasonable attorney, appraisal, and engineering fees.

(4) Federal funds may participate in payments by the SHD to a property owner for the following costs necessarily incurred in transferring property to the State:

(i) Recording fees, transfer taxes, and similar expenses incidental to conveying real property.

(ii) Penalty costs for prepayment of preexisting recorded mortgage entered into in good faith.

(iii) The pro rata portion of real property taxes paid which are allocable to a period subsequent to vesting of title in the SHD or effective date of possession by the SHD, whichever is earlier.

(c) *Taxes.* Federal participation will not be permitted in the payment of special assessments or in the payment of taxes, except as provided in paragraphs (b) (4) and (d) (1) of this section.

(d) *Property Management.* (1) Federal funds may participate in the net cost incurred by the SHD in the leasing, rental, maintenance, disposal of improvements, protection, rodent control, and clearance of real property acquired for right-of-way purposes. Taxes or payments in lieu of taxes required to be paid by a SHD are a legitimate property management expense and may be deducted from the gross rentals received.

(2) Federal funds may not participate in property management or demolition costs on excess lands acquired by the SHD when Federal participation in the costs of the related right-of-way acquisition is based on the provisions of paragraph (m) (1) of this section.

(3) Federal funds may participate in the net costs incurred by the SHD in the leasing, rental, maintenance, rodent control, protection and sale of excess lands when Federal participation in the cost of the related right-of-way acquisition is in accordance with paragraph (m) (2) of this section. In such instances, Federal funds may participate in the disposal or removal of improvements only when required by law or when such action will clearly enhance the value of the excess.

(4) Where right-of-way is acquired for future construction, the SHD may desire to close out the project before the net amount of rentals or salvage has been established. In such event, Federal participation may be established on the basis of the present worth of the estimate future net rentals and salvage.

(e) *Access Rights.* (1) Where full or partial control of access is obtained on an existing highway, Federal funds may participate in the cost of access rights, whether or not other real property interest is acquired, providing the payments for the loss or impairment of access is based upon elements of damage generally compensable in eminent domain. Participation in these costs is not contingent upon further construction of the highway facility.

(2) Federal funds may not participate in payments for access rights where the controlled access highway is on a new location.

(f) *Material Sites.* Subject to the provisions of Volume 6, Chapter 4, Section 1, Subsection 6, of the Federal-Aid Highway Program Manual, Federal funds may participate as either a right-of-way or construction item in the costs of acquiring land or interests therein outside the normal right-of-way for the purpose of obtaining road building material to be made available to the contractor.

(g) *Permanent and Temporary Easements.* The cost of acquiring interests in lands outside the normal right-of-way is eligible for Federal participation as a right-of-way or construction item:

(1) For permanent use; such as for drainage or slope easements.

(2) For temporary use; such as for construction purposes or for right-of-way clearance.

(h) *Damages.* Federal funds may participate in severance or consequential damages, or both resulting from a highway project upon an affirmative showing that the acquiring agency is obligated to pay such damages under applicable law, provided that such damages are of a type generally compensable in eminent domain, and are determined by FHWA to be generally reimbursable on Federal-aid highway projects. Payments made for personal property (except as otherwise provided), loss of business or goodwill, circuity of travel, diversion of traffic, and other items of damage not generally compensable in eminent domain are not eligible for Federal participation.

(i) *Utility and Railroad Real Property.*

(1) If a utility or railroad is displaced by a federally assisted highway project, Federal funds may participate in the cost of real property acquired by a SHD, utility, or railroad to replace real property owned by the railroad or utility

and conveyed to the SHD for highway right-of-way as provided in Volume 1, Chapter 4, Sections 3 and 4, of the Federal-Aid Highway Program Manual.

(2) Federal funds may participate in the cost of acquisition of non-operating real property of a utility or railroad in the same manner as for other privately owned property.

(j) *Court Deposits and Interest Thereon.* (1) Federal funds may participate in the amount deposited in court in connection with the condemnation of a parcel when the deposit is:

(i) the amount of the SHD's approved estimate of just compensation, or

(ii) the amount established by court order, or

(iii) the amount established by other means required under State law as a condition of the SHD's obtaining possession of the right-of-way.

When the amount deposited exceeds the amount of the final settlement or award, the Federal share of the excess deposit shall be promptly credited to the project or be deducted from any payment due the SHD from FHWA on any Federal-aid project.

(2) Where, in the opinion of FHWA, the total payments on progress vouchers for the Federal share of court deposits become excessive, further payment may be withheld until the situation is remedied. The Federal share of the total amount of court deposits, plus the Federal share of other eligible expenses incurred on a project may not exceed the Federal funds included in the project agreement.

(3) Federal funds may participate in the cost of interest on the amount of the deposit into court for a period of not to exceed 45 days, from the date of deposit, where due to court procedures the deposit is not immediately available to the owner. Federal funds may not participate in such interest costs where the deposit is available but the owner chooses not to withdraw it.

(4) Where a condemnation settlement or award exceeds the amount deposited into court, Federal participation may be allowed in interest paid on the amount in excess of the deposit from the date of the original deposit until the date of settlement or award. Where court procedures prevent the amount from being delivered immediately following settlement or award, Federal participation may be allowed in interest paid on the excess amount for a period not to exceed

45 days following such settlement or award. When the SHD appeals an award, Federal participation may be allowed in the required interest payment on the excess until 45 days after the final determination.

(5) Federal participation shall not be allowed in interest cost on payments to an owner where the SHD accepts a voluntary right of entry instead of making such payment available to the owner, either directly or by deposit with the court, except in cases of unusual circumstances with prior approval by FHWA. Where the final settlement or award exceeds the amount which could have been deposited or paid, Federal participation in interest costs on the amount of the excess may be allowed from the date of physical entry upon the parcel, in accordance with paragraph (j) (4) of this section.

(k) *Tenant Owned Improvements.* Federal participation may be allowed in payments made to a tenant for his buildings, structures, or other improvements which are acquired by a State to the extent that such payment is not a duplication of any payments otherwise authorized by law.

(l) *Exchanges of State Owned Lands.* When State owned lands are exchanged for lands required for highway purposes, Federal funds may participate in the current fair market value of the land being exchanged. This concept is conditioned in that participation in the total consideration, including land, any cash payments, and any construction features to mitigate damages, may not exceed the pro rata share of the fair market value of the land required for highway purposes plus damages.

(m) *Excess Acquisitions.* When only a portion of a property is required for highway right-of-way or highway related needs and the SHD elects to acquire a larger portion or the whole property, Federal participation will be in accordance with one of the following alternatives selected by the SHD for statewide application, as set forth in its Right-of-Way Operations Manual. The provisions of this paragraph do not apply to uneconomic remnants.

(1) First alternative:

Federal participation in the fair market value of the portion of the property required for the highway project plus damages, if any, to the remainder.

(2) Second alternative:

(i) The purpose of this alternative is only to provide an alternative means of establishing the amount of damages where only a part of a property is required for federally assisted highway project purposes. There will be no Federal participation in any relocation costs associated with that part of the tract acquired which is outside the right-of-way.

(ii) An initial installment of the Federal pro rata share of the cost of the land required for the project determined by apportioning the land cost of the entire tract between the part required and part remaining solely on the basis of area, plus the cost of improvements necessarily removed for the project, less salvage value of the improvements.

(iii) A final installment, representing the Federal share of damages to the remainder, will be the difference between the initial costs of the excess property, prorated as in paragraph (m) (2) (ii) of this section, and the price realized at a public sale of the excess property. The sale must be accomplished prior to submission of the final voucher for the project or not later than 2 years from the time the highway facility is opened to traffic, whichever is earlier. Should condemnation proceedings prevent sale of the excess property within the time limits described, the excess may be disposed of within 12 months of when the SHD can legally do so.

(iv) Two or more excess areas may be combined and sold in one transaction if the SHD anticipates a higher overall return by such action.

(v) Should the SHD not dispose of the excess property within the time limits set forth in paragraph (m) (2) (iii) of this section, Federal participation shall be limited as under paragraph (m) (2) (ii) of this section unless an exception is granted by FHWA or unless an alternative disposal procedure has been accepted by FHWA.

(n) *Uneconomic Remnants.* Federal funds may participate in the acquisition costs of uneconomic remnants whether or not the remnants are incorporated in the highway right-of-way.

(o) *Acquisition in Connection with other Federal or Federally Assisted Programs.* (1) Rights-of-way may be acquired by the SHD for a Federal-aid highway in coordination or cooperation with other Federal or federally assisted programs. The SHD and the agency involved shall set forth in an agreement or

memorandum of understanding the responsibilities of each in the acquisition of real property involved and the basis for the sharing of costs. Such agreements should be executed during early stages of project development, and will not jeopardize future Federal participation in costs to the SHD, if the agreement does not constitute a binding request for conveyance of specified lands. The agreement should be in effect when a request for authorization to acquire is submitted to FHWA.

(2) Federal funds may participate in obligations for costs incurred by a SHD after FHWA authorization to proceed. For purposes of paragraph (o) of this section an obligation is incurred by the SHD on the date that the SHD commits itself to the acquiring agency through a binding request for conveyance of specified lands.

(3) Federal (FHWA) participation in costs incurred by the SHD shall be determined on the following basis, unless prior approval is obtained from FHWA for participation on some other basis:

(i) Where the project of the acquiring agency, such as an urban renewal agency, is developed without consideration of the highway project, and the land has been cleared at the time the SHD requests conveyance of specified lands, Federal (FHWA) participation may not exceed its pro rata share of the appraised value of the cleared land required. The appraised value shall be mutually acceptable to the SHD and the other agency involved. Where the same conditions exist except that improvements have not been removed at the time of request for conveyance, Federal (FHWA) participation may not exceed the fair market value as determined by costs to the acquiring agency.

(ii) Where the project of the acquiring agency, such as an urban renewal agency, was continued after written knowledge that highway project would be involved, whether or not the exact location thereof was known, Federal (FHWA) participation may not exceed the fair market value as determined by cost to the acquiring agency. It would not matter whether any improvements were removed before or after a request for conveyance is submitted. The SHD must assure itself that such real property acquisitions are in compliance with Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.).

(iii) "Cost to the acquiring agency," for purposes of Federal (FHWA) participation, may include the fair market value payment, incidental acquisition expenses, settlement costs, and clearance and demolition costs, subject to the agreement between the parties, but shall exclude interest on borrowed money, and administrative and overhead expenses. (See also § 740.9(d) of this subchapter regarding relocation matters.)

(iv) When the "cost to acquiring agency" forms the basis of value for participation, FHWA may accept either a parcel by parcel cost or an overall proration based on total area without regard to location of improvements within the acquiring agency's project area. Where a parcel by parcel basis is used, costs may be prorated on an area basis where only a part of a parcel is required for highway purposes.

(4) Where an urban renewal or any other such federally assisted agency performs work in connection with acquisition of rights-of-way for Federal or Federal-aid highway projects, FHWA may accept certifications of another Federal agency that the work has been performed in accordance with its governing regulations.

(p) *Separation of Functions.* (1) Except as provided in 23 CFR Part 750, Subpart D, Federal funds may not participate in the cost of acquisition of a property, or related incidental costs, where:

(i) Negotiations were conducted by a person who made an appraisal of or was the reviewing appraiser for the property, or

(ii) Payments have been delivered in person by those who have negotiated, appraised, or acted as reviewing appraiser for the property, or

(iii) Payments have been delivered in person by the attorney who negotiated a settlement with the owner.

(2) The provisions of paragraph (p) (1) of this section apply whether such person was a salaried employee of the SHD or other acquiring agency, or was retained on a fee basis.

(q) *Construction in Mitigation of Damages.* Costs of construction performed by the SHD in order to mitigate damages to a remainder of real property are eligible for Federal participation, provided that such construction re-

sults in an appropriate reduction in compensation to be paid the owner.

[39 FR 26416, July 19, 1974; 39 FR 45215, Dec. 31, 1974]

§ 710.305 Support for claims.

(a) *Progress and Final Claims.* (1) Any progress or final claim for Federal fund reimbursement of expenditures made for right-of-way shall be supported by the following documents and information:

(i) A right-of-way map or plan showing the rights-of-way authorized and actually acquired including parcel identification numbers, area acquired, property lines of the area acquired, and any other pertinent data affecting the cost of right-of-way such as structures, improvements, and fences.

(ii) Statement of cost of right-of-way showing:

- (A) Parcel number.
- (B) Cost of parcel.
- (C) Cost of excess land, if any, acquired from same ownership.
- (D) Credits by parcel or project.
- (E) Incidental expenses by parcel or project.

(F) Cost of construction performed in mitigation of damages on a parcel basis, if claimed as a right-of-way item.

(2) The required documents and information may be submitted with the claim or made available in the SHD's files in readily identifiable form as determined appropriate by the FHWA in consultation with the SHD. Further, where a right-of-way map or plan which meets the requirements set forth in paragraph (a)(1)(i) of this section has been previously submitted, the FHWA may accept such map or plan for final or progress claim purposes.

(3) The information required in paragraph (a)(1)(ii) of this section may be submitted under current billing procedures where a memorandum of understanding on such procedures is in effect between the SHD and FHWA.

(b) *Document Availability.* All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, relocation assistance and payment records, and other data and documents relative to the acquisition of the right-of-way shall be available for inspection at reasonable times by authorized representatives of the FHWA and other authorized Federal representatives.

(c) *Federal-aid Project Numbers.* Right-of-way plans, contracts, deeds, appraisals, options, vouchers, correspondence, and all other documents and papers to which FHWA needs to refer shall carry the Federal-aid project number for ready identification.

[39 FR 26416, July 19, 1974; 39 FR 45215, Dec. 31, 1974]

§ 710.306 Withholding Federal participation.

(a) If the FHWA determines that any amount claimed is not adequately supported, it may approve Federal participation in the amount it determines is adequately supported and shall notify the SHD, in writing, citing the reasons why items and amounts are not eligible for Federal participation. Where correctable noncompliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where the noncompliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total.

(b) If, at any time, the FHWA determines that the organization, practices, and procedures actually applied by the SHD are not in substantial conformity with those accepted by the FHWA, or are otherwise not acceptable, the FHWA shall notify the SHD in writing. No further authorizations for acquisition of right-of-way shall be issued by the FHWA after the date of such notification until:

(1) a review of the facts substantiates to the satisfaction of FHWA that the SHD's accepted practices and procedures are satisfactory and will be adhered to by the SHD, or

(2) revised practices and procedures have been submitted by the SHD and accepted by FHWA. The FHWA may participate in claims made or to be made by the SHD following review of the facts pertaining to the matter.

Subpart D—Civil Rights

§ 710.401 Purpose.

To prescribe the general policy of the Federal Highway Administration (FHWA) in the area of civil rights relative to the right-of-way acquisition function.

§ 710.402 Applicability.

The provisions of this section apply to all States and political subdivisions thereof which receive Federal financial

assistance in connection with the Federal-aid highway program.

§ 710.403 Definitions.

As used in this subpart:

(a) "Recipient" means any State, territory, possession, the District of Columbia, Puerto Rico; any political subdivision or instrumentality thereof; any public or private agency, institution, organization, or other entity; or any individual in any State, territory, possession, the District of Columbia or Puerto Rico to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof; but such term does not include any ultimate beneficiary under any such program.

(b) "Program" refers to the Federal-aid highway program under 23 U.S.C. 101, et seq.

§ 710.404 Policies.

(a) Section 601 of Title VI, Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.): "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

(b) Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324): "No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under Title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive, and will not prejudice or cut off any other legal remedies available to a discriminatee."

(c) *Equal Employment Opportunity.*

(1) The FHWA's equal employment opportunity responsibilities have their basis in the Civil Rights Act of 1964, Executive Orders 11246, 11247, and 11375 and related rules, regulations, and procedures of the Civil Service Commission, the Department of Labor, the Department of Justice, the Department of Transportation, and the Equal Employment Opportunity Commission. These direct that

affirmative and positive measures be taken to insure equal opportunity of employment in federally assisted programs and projects.

(2) It is the policy of the FHWA that every employee and representative of agencies to which this directive applies shall perform all official actions affirmatively and in full accord with the spirit and letter of the Constitution and applicable laws, regulations, and policies to assure equality of opportunity for all persons, and to avoid even the appearance of discrimination because of race, creed, color, sex, or national origin.

§ 710.405 Regulations.

(a) Section 602 of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) states in pertinent part that each Federal agency empowered to extend Federal financial assistance is authorized and directed to effectuate the provision of section 601 by issuing the necessary rules, regulations, and orders. Pursuant to this requirement, 49 CFR 21 was issued by the Office of the Secretary of Transportation.

(b) In accordance with 23 U.S.C. 324, prohibition of discrimination on the ground of sex has been added to the provisions of 49 CFR 21 included within this directive.

(c) Discriminatory Action Prohibited:

(1) A recipient may not directly or through contractual or other arrangements, on the grounds of race, color, sex, or national origin:

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his or her receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person, in any way, in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he or she satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons

must meet in order to be provided any service, financial aid, or other benefit, provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise, or afford him or her an opportunity to do so which is different from that afforded others under the program.

(2) In determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such programs, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, sex or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex or national origin.

(3) In determining the site or location of facilities, a recipient may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this directive applies, on the grounds of race, color, sex or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI of the Civil Rights Act of 1964 or this directive.

(4) As used in this directive, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance, include any service, financial aid, or other benefit provided in or through a facility receiving Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this directive does not limit the generality of the prohibition in § 710.404(a) and § 710.404(b).

(6) The provisions of this directive do not prohibit the consideration of race, color, sex or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the pro-

gram or activity receiving Federal financial assistance, on the grounds of race, color, sex or national origin. Where previous discriminatory practice or usage tends, on the ground of race, color, sex or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this directive applies, the recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Civil Rights Act of 1964.

(d) *Specific Discriminatory Actions Prohibited:* (1) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for or incidental to, acquisition of right-of-way, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisition of right-of-way.

(2) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway acquisition of right-of-way.

(3) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over, or under the right-of-way of such highways.

(4) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects assisted by the Federal Highway Administration.

(e) *Intimidatory or Retaliatory Acts Prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 of the Civil Rights Act of 1964 or 49 CFR 21, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, pro-

ceeding, or hearing. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 49 CFR 21.

(f) *State Civil Rights Assurances.* Each State highway department has executed a Title VI Assurance providing that specific nondiscrimination provisions, as set forth in Appendix A to the Assurance, will be included in every contract subject to the Civil Rights Act of 1964 and the DOT Title VI Regulations (49 CFR 21). The Assurance further provides that the provision of Appendix C thereof shall be included in any future deeds, leases, permits, licenses, and similar agreements entered into by the State with other parties (1) for the subsequent transfer of real property acquired or improved under the Federal-aid highway program, and (2) for the construction or use of or access to space on, over, or under real property acquired, or improved, under the Federal-aid highway program. Accordingly, the provisions of Appendix A of the Title VI Assurance shall be included in all personal service right-of-way contracts, and the provisions of Appendix C to the Title VI Assurance shall be included in those documents enumerated above.

PART 711 [RESERVED]

PART 712—THE ACQUISITION FUNCTION

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Subpart A—Policy

AUTHORITY: (42 U.S.C. 2000d.1, 4633, 4651-4655; 23 U.S.C. 315, 323) 49 CFR 1.48(b); 23 CFR 1.32.

SOURCE: 39 FR 29590, Aug. 16, 1974, unless otherwise noted.

§ 712.101 Purpose.

This Subpart prescribes Federal Highway Administration (FHWA) policies related to the acquisition function. The intent and purpose of these policies are to assure the establishment of uniform real property acquisition practices to provide consistent, equitable treatment for owners and tenants of real property acquired for Federal and federally assisted highway and highway related projects.

§ 712.102 Applicability.

(a) To the greatest extent practicable under State law, the policies in § 712.103(a) through (n) of this subpart are applicable to all States and political subdivisions thereof that acquire real property for any highway or highway related project in which Federal funds will participate in any part of the cost of the project.

(b) The policies in § 712.103(o) through (s) of this subpart are applicable to all States and political subdivisions thereof that acquire real property for any highway or highway related project in which Federal funds will participate in any part of the cost of the project.

§ 712.103 Policies.

(a) *Negotiated purchase.* Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(b) *Prompt offer.* The acquiring agency shall make a prompt offer to acquire real property for the full amount it has established and approved as just compensation for the acquisition.

(c) *Summary statement.* Upon initiation of negotiations, the acquiring agency shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for the amount it has established as just compensation for the proposed acquisition. As a minimum, the summary statement shall include:

(1) The amount established as just compensation.

(2) A statement explaining that the offer is based on the acquiring agency's review and analysis of an appraisal(s) of such property made by a qualified appraiser(s).

(3) Identification of the real property to be acquired, including the estate or interest being acquired.

(4) Identification of improvements and fixtures considered to be part of the real property to be acquired.

(5) Where appropriate, the just compensation for the real property to be acquired and for damages to remaining real property shall be separately stated.

(d) *Surrender of possession.* No owner shall be required to surrender possession of real property before the acquiring agency pays the agreed purchase price or deposits with the court, for the use of the owner, an amount not less than the agency's approved estimate of just compensation, or the amount of the award of compensation in the condemnation proceeding for such property.

(e) *Notice to vacate.* To the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, or to move his business or farm operation without at least 90 days written notice from the acquiring agency of the date by which such move is required.

(f) *Fair rental value.* If the acquiring agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short term occupier.

(g) *Coercion.* In no event shall the acquiring agency, in order to compel an agreement on the price to be paid for the property: (1) Advance the time of

condemnation; or (2) defer negotiations; or (3) defer condemnation and the deposit of funds in court for the use of the owner; or (4) take any other action coercive in nature.

(h) *Condemnation.* If any interest in real property is to be acquired by exercise of the power of eminent domain, the acquiring agency shall institute formal condemnation proceedings. No acquiring agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(i) *Uneconomic remnant.* If the acquisition of only a part of a property would leave its owner with an uneconomic remnant(s), the acquiring agency shall offer to acquire the remnant(s).

(j) *Improvements—interest to be acquired.* If the acquiring agency acquires any interest in real property, it shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired which it requires to be removed from the real property or which it determines will be adversely affected by the use to which the real property acquired will be put.

(k) *Improvements—just compensation.* For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under paragraph (j) of this section, the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of the lease.

(l) *Improvements—tenant owned.* The tenant who owns a building, structure, or other improvement required to be acquired under paragraph (j) of this section shall be paid the fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is greater.

(m) *Duplication of payment.* Payment under paragraph (1) of this section shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest

in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the acquiring agency all his right, title, and interest in and to such improvements. A separate summary statement shall be provided to such tenant where his improvements are being separately acquired.

(n) *Tenant rights.* Nothing in paragraphs (j) through (m) shall be construed to deprive the tenant of any rights to reject payment under these paragraphs and to obtain payment for such property interests in accordance with other applicable law.

(o) *Incidental expense reimbursement.* The acquiring agency, as soon as practicable after the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses necessarily incurred for:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

(p) *Litigation expenses.* The acquiring agency shall pay to the owner of any right, title, or interest in real property such sum as the court, having jurisdiction of a proceeding instituted by the acquiring agency to acquire the real property by condemnation, awards the owner reimbursement for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if:

(1) The final judgment is that the acquiring agency cannot acquire the real property by condemnation; or

(2) The proceeding is abandoned by the acquiring agency.

(q) *Inverse condemnation expenses.* Where an inverse condemnation or simi-

lar proceeding is successfully maintained for the taking of real property, the acquiring agency shall pay the owner, as a part of the judgment or settlement, such sum as will in the opinion of the court or the official effecting the settlement, reimburse the owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the proceedings.

(r) *Donations.* Nothing in this regulation shall be construed to prevent a person whose real property is being acquired for a federally aided highway project from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefor, after such person has been fully informed of his right to receive just compensation for the acquisition of his property.

(s) *Civil rights.* The right-of-way acquisition function shall be conducted in such a way and manner as to assure that no person shall, on the ground of race, color, sex, or national origin, be denied the benefits to which the person is entitled, or be otherwise subjected to discrimination.

[39 FR 29590, Aug. 16, 1974, as amended at 40 FR 3982, Jan. 27, 1975]

Subpart B—General Provisions and Project Procedures

AUTHORITY: (42 U.S.C. 2000d.1, 4633, 4651-4655; 23 U.S.C. 315, 323) 49 CFR 1.48(b); 23 CFR 1.32.

SOURCE: 39 FR 29591, Aug. 16, 1974, unless otherwise noted.

§ 712.201 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) project provisions and procedures relating to the acquisition of real property for highway and highway related projects.

§ 712.202 Applicability.

(a) The provisions of § 712.203 of this subpart are applicable to all States and political subdivisions thereof that acquire real property for any highway or highway related project where Federal funds will participate in any part of the cost of the project.

(b) The provisions of § 712.204 of this subpart are applicable to all States and political subdivisions thereof where Federal funds will participate in any part of the right-of-way costs of the project.

§ 712.203 General provisions.

(a) *Real property interest to be acquired.* (1) On federally assisted highway projects, the acquiring agency shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of the project.

(2) Where State law permits, rights-of-way for Federal-aid highways shall be acquired in unlimited vertical dimension unless savings in the overall cost of a project, or other considerations in the public interest, such as plans for community development or multiple use, support the acquisition of rights-of-way of limited vertical dimension. Where the acquisition is in limited vertical dimension, the rights acquired shall be sufficient to encumber the unacquired realty with provisions which will ensure full use and safety of the highway facility to be constructed.

(3) Subsurface mineral rights may be reserved to the owner thereof where the acquisition of such rights is not reasonably necessary for the construction, protection, support, and preservation of the highway facility to be constructed.

(b) *Use and occupancy of right-of-way.* (1) All real property, including airspace, within the right-of-way boundaries of a project shall be exclusively devoted to public highway purposes and preserved free of all public and private installations, facilities, and encroachments except as authorized by FHWA.

(2) Use of airspace for nonhighway purposes shall be in accordance with the provisions of 23 CFR Part 713, Subpart B.

(3) Joint development and multiple use of highway rights-of-way shall be in accordance with the provisions of Volume 7, Chapter 7, section 8, of the Federal-Aid Highway Program Manual.¹

(4) Railroads and utilities may be accommodated in accordance with the provisions of 23 CFR Part 645, Subpart B.

(5) Bikeways and pedestrian walkways may be accommodated in accordance with the provisions of 23 CFR Part 652.

(c) *Public information brochure.* The State highway department shall prepare a brochure adequately describing the land acquisition process under State law, and the owner's rights, privileges, and obligations thereunder. The information

¹ Copy of this directive is available at FHWA offices listed in 49 CFR Part 7, Appendix D.

contained therein should be clearly presented in nontechnical terms to the extent practicable. Where appropriate, such brochure should be written in a language in addition to English.

§ 712.204 **Project procedures.**

(a) *Programming.* Any phase of right-of-way related work in which Federal funds are to participate shall be programmed in accordance with the provisions of 23 CFR Part 630, Subpart A.

(b) *Authorizations—general.* (1) The SHD shall request, in writing, FHWA authorization to proceed with right-of-way acquisition if Federal funds are to participate in the costs related thereto.

(2) Acquisition of real property or interests therein for highway or highway related purposes which are determined necessary by project design requirements or other FHWA policy requirements may be authorized by FHWA, including:

(i) Real property or interests therein pursuant to 23 CFR Part 727, and;

(ii) Whole properties or portions thereof to a logical boundary or barrier, thus avoiding severance damage payments and providing a highway facility more in conformity with the neighborhood through which it passes.

(c) *Authorizations.* Concurrent with or subsequent to program approval, FHWA may, in response to a SHD's request:

(1) Authorize the SHD to proceed with those right-of-way activities necessary for the completion of the final environmental impact statement or negative declaration and preparation for public hearings; or

(2) Authorize the SHD to proceed with all preliminary right-of-way activities, including property appraisals, up to but not including negotiations, with the condition that appraisals of partial takings will not be made until the SHD has prepared right-of-way plans meeting the requirements of Volume 6, Chapter 4, section 2, subsection 5, of the Federal-Aid Highway Program Manual²; or

(3) Authorize the acquisition of rights-of-way on a project with the stipulation that the following requirements will be met before acquisition will commence:

(i) The relocation project assurances and relocation plan have been approved

by FHWA pursuant to the provisions of 23 CFR Part 740.

(ii) A final environmental negative declaration, or environmental impact and related statements have been processed in accordance with 42 U.S.C. 4332(2)(C) and 49 U.S.C. 1653(f), and hearing transcripts, reports, and certifications required by 23 U.S.C. 128 have been filed.

(d) *Authorizations—hardship acquisition and protective buying.* (1) Prior to completion of processing of the final environmental impact statement or adoption of the negative declaration and if found in the public interest, the FHWA upon proper documentation may authorize the acquisition of a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor where it is shown that the acquisition is necessary to:

(i) Alleviate particular hardship to a property owner, on his request, in contrast to others because of an inability to sell his property;

(ii) Prevent imminent development and increased costs of a parcel which would tend to limit the choice of highway alternatives.

(2) Hardship acquisition and protective buying procedures shall not apply to properties subject to the provisions of 49 U.S.C. 1653(f) (commonly known as section 4(f)) or 16 U.S.C. 470(f) (historic properties) until the required section 4(f) determination and the procedures of the Advisory Council on Historic Preservation are completed.

(3) Acquisition of property under § 712.204(d) shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

(4) Ultimate Federal participation in the cost of property acquired under § 712.204(d) is dependent upon the incorporation of such property in the final highway right-of-way. Where a parcel is partially incorporated, Federal participation will be in accordance with the alternative selected for statewide application pursuant to 23 CFR 710.304(m).

(5) Subject to subparagraphs (d)(2) and (d)(3) of this paragraph, a SHD may acquire property with its own funds under § 712.204(d) before FHWA program approval and not jeopardize Federal participation in subsequent project costs provided the SHD's acquisition ac-

² Copies of this directive is available at the FHWA offices listed in 49 CFR Part 7, Appendix D.

tivities comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d) et seq.), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), and 23 CFR Part 740. Costs so incurred are not eligible for Federal participation.

(e) *Public hearings.* Information shall be presented and an opportunity provided for discussion of the land acquisition process at public hearings, in order to assure that the public is adequately informed.

(f) *Project field inspections.* Right-of-way personnel shall make project field inspections at appropriate times throughout the development of a project to assure that adequate consideration is given to significant right-of-way elements involved in the location and design of the project including possible social, economic, and environmental effects.

(g) *Right-of-way project agreements.*

(1) Project agreements and modifications thereof shall be prepared and executed in accordance with Volume 6, Chapter 3, Section 1, Subsection 1, of the Federal-Aid Highway Program Manual.³

(2) Project agreements may be entered into at any time after Federal funds have been obligated on the project. The estimate of cost of right-of-way required for programming a project may be used for project agreement purposes, provided a more accurate and up-to-date estimate is not available.

(3) Project agreements covering acquisition of right-of-way shall, pursuant to 23 U.S.C. 108(a), contain a clause providing for the refund of any payments made by the FHWA in the event that actual construction of a road on such rights-of-way is not undertaken by the close of the 10th fiscal year following the fiscal year in which the agreement was executed. The SHD will be considered in compliance with the statutory requirements where, before expiration of the 10-year period, it has taken all of the following actions:

(i) Awarded a contract for construction of a reasonable section of the highway covered by the agreement;

(ii) Proceeded with sufficient actual work to give visual evidence thereof at the construction site, and

(iii) Thereby provided evidence of good faith to proceed without delay to complete construction of the highway upon the entire length of right-of-way covered by such project agreement.

Subpart C—Negotiations

AUTHORITY: 42 U.S.C. 2000d.1, 4633, 4651-4655; 23 U.S.C. 315, 323; 49 CFR 1.48(b); 23 CFR 1.32.

SOURCE: 39 FR 29592, Aug. 16, 1974, unless otherwise noted.

§ 712.301 Purpose.

The purpose of this subpart is to prescribe Federal Highway Administration (FHWA) procedures relating to acquisition of real property by negotiation.

§ 712.302 Definition.

For purposes of this subpart, negotiation is defined as the process by which the acquiring agency makes every reasonable effort to acquire real property through a voluntary transfer of such property.

§ 712.303 Applicability.

The provisions of this subpart are applicable to all States and political subdivisions thereof in the acquisition of real property for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

§ 712.304 Procedures.

(a) *Staff and fee negotiators.* (1) Negotiations shall be conducted by qualified staff employees of the State highway department (SHD) or political subdivision of a State, except as provided in subparagraph (3).

(2) The SHD shall establish qualification standards for staff negotiators.

(3) In exceptional cases only, and upon prior approval of FHWA on a project basis, firms and individuals meeting the SHD's qualification standards may be employed by contract for negotiating purposes where the acquiring agency's workload significantly exceeds its normal workload.

(i) The employment of fee negotiators shall be by written contract.

(ii) The amount of the fee should be established on a parcel basis, and shall not be determined as a percentage of fair market value. The fee shall represent a fair payment for the work performed.

(b) *Negotiation contracts.* (1) State Resident Owner.

³Copy of this directive is available at FHWA offices listed in 49 CFR Part 7, Appendix D.

(i) Except as provided in paragraph (b), the negotiator shall: (1) Make all reasonable efforts to personally contact each State resident property owner or his designated representative, (2) explain the acquisition, and (3) offer in writing the approved estimate of just compensation of the property to be acquired, and a summary statement of the basis for the offer. When all reasonable efforts to make a personal contact have failed, the owner may be contacted by certified or registered first class mail or other means appropriate to the situation.

(ii) The FHWA may permit exceptions to the personal contact provisions of subparagraph (a) on a parcel by parcel basis.

(2) **Out-of-State Owner.** An out-of-State property owner may be personally contacted, or the acquiring agency may elect to contact the owner by certified or registered first class mail.

(c) **Information to be provided owner.** Not later than the first contact where price is discussed, the owner shall be provided with a brochure describing the land acquisition process and the owner's rights, privileges, and obligations thereunder.

(d) **Revised offers.** A revised offer and summary statement of its basis shall be provided to the owner if:

(1) The taking is revised, or

(2) The approved estimate of just compensation is revised by the reviewing appraiser.

(e) **Time to consider offer.** The property owner shall be given a reasonable period of time to consider the offer and obtain professional advice or assistance if he so desires.

(f) **Records of negotiations.** (1) The negotiator shall maintain timely adequate records of negotiation on a parcel basis. The record shall be written in permanent form and completed within a reasonable time after each contact with the property owner. The report shall be signed and dated by the assigned negotiator.

(2) When negotiations are successful, a signed statement is to be prepared by the negotiator to the effect that:

(i) The written agreement embodies all considerations agreed to between the negotiator and the property owner;

(ii) The negotiator understands the acquired property is for use in connection with a Federal-aid highway project;

(iii) The negotiator has no direct or indirect present or contemplated future personal interest in the property or in any monetary benefit from the acquisition of the property; and

(iv) Agreement was reached without coercion of any type.

(3) Upon termination of negotiations, the above records are to become a part of the project parcel file.

(g) **Owner retention of improvements.** The owner of improvements located on the lands being acquired as right-of-way should be offered the option of retaining those improvements at a retention value determined by the SHD. The SHD's retention value determination should be available at the initiation of negotiations or within a reasonable period of time after the owner expresses an interest in the retention concept. Retention value should normally be established by property management personnel through a comparative analysis of improvements sold at public sale.

Subpart D—Administrative Settlements, Legal Settlements, and Court Awards

AUTHORITY: (42 U.S.C. 2000d.1, 4633, 4651-4655; 23 U.S.C. 315, 323) 49 CFR 1.48(b); 23 CFR 1.32.

SOURCE: 39 FR 29593, Aug. 16, 1974, unless otherwise noted.

§ 712.401 Purpose.

This Subpart prescribes Federal Highway Administration (FHWA) policies relating to settlement of acquisitions through administrative means and legal processes.

§ 712.402 Definitions.

As used in this subpart:

(a) **Administrative settlement.** Any settlement, made or authorized to be made by the responsible State highway department (SHD) official, which is in excess of the SHD's approved estimate of just compensation.

(b) **Legal settlement.** Any settlement made by the responsible State legal representative. This includes stipulated settlements approved by the court in which the condemnation action has been filed.

(c) **Court award.** Any decision following a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

§ 712.403 Applicability.

The provisions of this subpart are applicable in the acquisition of real property for a highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

§ 712.404 Administrative settlements.

(a) The SHD shall identify the responsible official who has the authority to approve administrative settlements. In a decentralized operation one official in each district may be delegated approval authority.

(b) The designated State representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information including:

(1) All available appraisals, including owners' appraisal.

(2) The approved estimate of just compensation.

(3) Recent court awards for similar type properties.

(4) The negotiator's recorded information.

(5) The range of probable testimony as to fair market value should condemnation be filed.

(6) The estimate of trial cost considered in conjunction with other information.

(7) The opinion of legal counsel when appropriate.

(c) The SHD's records shall be documented whenever an administrative settlement is made. The rationale for the settlement shall be set forth in writing. Federal funds may participate in administrative settlements made and documented in accordance with the provisions of this paragraph.

§ 712.405 Legal settlements.

(a) The SHD shall identify the legal office or official responsible for making legal settlements. The coordination which will be followed between the legal office and the right-of-way office prior to making any settlement shall be described.

(b) The legal office or official may make a legal settlement when it is determined that such action is in the public interest. Legal settlements which are

based upon new or revised appraisal data as the principal justification shall be coordinated with and approved by the responsible official of the acquiring agency having final authority over the right-of-way matters.

(c) The appropriate State file shall be documented whenever a legal settlement in excess of the amount established as just compensation is made. The rationale for the settlement shall be set forth in writing. Federal funds may participate in legal settlements made and documented in accordance with the provisions of this paragraph.

§ 712.406 Court awards.

Federal funds may participate in excess of the amount established as just compensation if there is supporting documentation in the appropriate State file which includes:

(a) A trial report, signed by the trial attorney.

(b) A signed statement of the legal counsel in charge of representing the State in condemnation litigation stating his concurrence in the reasoning and disposition of the case.

§ 712.407 Noncompensable items.

Should the administrative settlement, legal settlement or the court award include an apparent payment for items considered ineligible for Federal participation, the amount paid for such items shall be determined by the SHD and excluded from the SHD's claim for Federal participation in the settlement or award.

§ 712.408 Special Counsel.

(a) If part-time assistants or legal counsel are regularly employed for Federal-aid right-of-way procurement and this is set forth in the SHD's manual or procedures and accepted by FHWA, reimbursement may be claimed for the eligible cost of the services of such attorney. Advance FHWA approval shall be obtained for the employment of special counsel for a particular project, if not covered in the accepted State plan. Federal participation may be allowed upon a proper showing that:

(1) The employment of special counsel is in the public interest,

(2) The fee is reasonable, and

(3) The fee is not on a percentage basis.

(b) Federal participation shall not be permitted in payment made to a city

or county attorney for work performed in connection with the acquisition of rights-of-way where he is obligated to perform such work without additional compensation. In those cases where the normal duties of the attorney for which he is compensated do not include the acquisition of property for highway purposes, Federal funds may participate in payments to him for services performed upon a proper showing of the facts.

[39 FR 29593, Aug. 16, 1974; 39 FR 34277, Sept. 24, 1974]

Subpart E—Federal Land Transfers and Direct Federal Acquisition

AUTHORITY: 23 U.S.C. 101(a), 107, 108 (a) and (b), 111, 204(a), 210(e), 308, 315, and 317; 42 U.S.C. 4633, 4651 and 4654; 23 C.F.R. 1.32; 49 C.F.R. 1.48(b) and Part 21.

SOURCE: 39 FR 32604, Sept. 10, 1974, unless otherwise noted.

§ 712.501 Purpose.

This regulation prescribes Federal Highway Administration (FHWA) policies and procedures relating to Federal land transfers and direct Federal acquisition.

§ 712.502 Applicability.

The provisions of 712.503 of this subpart apply to all projects on a Federal-aid system, direct Federal projects, or federally assisted highway projects. The provisions of 712.504 apply only to Interstate, Defense Access, and Forest highways.

§ 712.503 Federal land transfers.

(a) Title 23 U.S.C., sections 107(d) and 317, provide for the transfer of lands or interests in lands owned by the United States to a State Highway Department (SHD) or its nominee for highway purposes.

(b) If lands or interests in lands owned by the United States are needed for highway purposes, the SHD shall pursuant to 23 U.S.C. 107(d) and 317 file an application with the FHWA except that if such lands or interests therein are managed or controlled by the Army, Air Force, Navy, Veterans Administration, or Bureau of Indian Affairs, the SHD may make applications directly to said agencies or their land acquisition agent as indicated in Appendix 1. All applications shall include or be accompanied by the information shown in Appendix 1.

(c) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the SHD, un-

less the FHWA at its discretion chooses to prepare them. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). When the SHD prepares the deed, it will submit the proposed deed to the FHWA for review and execution. Following execution, the grantee shall record the deed in the appropriate land record office and so advise the FHWA of the recording data.

(d) When the need for the lands or the materials acquired under this subpart no longer exists, notice of that fact must be given by the SHD to the FHWA and to the concerned Federal agency, and such lands or materials will revert to the control of the Federal agency from which they were appropriated or to its assigns. The notice, in a form suitable for recording, shall state that the need for the lands or materials no longer exists for the purposes for which acquired.

[39 FR 32604, Sept. 10, 1974; 39 FR 33797, Sept. 20, 1974, as amended at 40 FR 2179, Jan. 10, 1975]

§ 712.504 Direct federal acquisition.

(a) Title 23 U.S.C. 101(a), 107, and 210(e) authorize Federal acquisition of lands and interests in lands for any project authorized for Interstate, Defense Access or Forest highways where the State is unable to acquire the required rights-of-way or it is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary findings to proceed with the acquisition of the rights-of-way, the SHD's written application for Federal acquisition shall include:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date FHWA authorized the SHD to commence right-of-way acquisition, the date the project was advanced to Stage 2 program status, the date of the project agreement and a statement that the agreement contains the provisions required by sections 108(a), 108(b), and 111 of Title 23, U.S.C.;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The SHD's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of FPM 90-1 published in 23 CFR Chapter 1, Appendix A;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations which have been conducted by the agency with landowners;

(9) An agreement that the SHD will pay its pro rata share of costs, including but not limited to those set forth in § 712.504(f) incurred in the acquisition of, or the attempt to acquire rights-of-way; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.).

(c) If the landowner tenders a right-of-entry at any time before the FHWA makes a determination that the SHD is unable to acquire the rights-of-way with sufficient promptness, the SHD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the SHD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the Court for the affected parcel be withdrawn after the appropriate motions are approved by the Court.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the SHD to take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner de-

clines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and

(8) Instructions that the authority granted to the SHD is not intended to preclude the U.S. Attorney from taking action, before the SHD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal Court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property as will in the opinion of the court reimburse him for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(h) The lands or interests in lands, acquired under these provisions, will be

conveyed to the State or the appropriate political subdivision thereof, upon agreement by the SHD, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may be set forth in the deed; and

(5) Notify FHWA at the appropriate time that all the conditions have been performed by the State.

(1) The Deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 C.F.R. Part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

APPENDIX 1—APPLICATION FOR FEDERAL LAND TRANSFERS

(1) *Preparation of Application.* The State's application, referenced in § 712.503, shall include or be accompanied by the following information:

(a) The purpose for which the lands are to be used.

(b) The estate or interest in the land required by State statute.

(c) The Federal-aid project number.

(d) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land.

(e) A commitment to construct the highway on or to remove materials from the lands to be transferred within a period of not more than 10 years following the transfer of the lands to the State.

(f) A map showing the survey of the lands to be acquired.

(g) A legal description of the lands desired.

(h) A statement on compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et seq.), the Historic Preservation Act (16 U.S.C. 470(f)), and with provisions for Preservation of Parklands (49 U.S.C. 1653(f)), if applicable.

(2) *Submission of application.* The application referenced in § 712.503 shall be submitted to FHWA, except as otherwise prescribed herein. Certain Federal agencies have special legislation for granting rights-of-way over lands under their jurisdictions and may proceed under their own laws. In those cases, the SHD should file its application directly with the Federal agency. Although they have special authority, the Federal agencies sometimes wish to proceed under 23 U.S.C. 107(d) and 317 and, in such cases, the application should be filed with the FHWA. The agencies having special authority which would permit the State to file its application directly are as follows:

(a) *Bureau of Indian Affairs.* Application should be submitted directly to the Bureau of Indian Affairs, Washington, D.C., for rights-of-way across tribal lands or individually owned lands held in trust by the United States or encumbered by Federal restrictions. All other lands held by the Bureau of Indian Affairs are transferred under 23 U.S.C. 107(d) and 317.

(b) *Army or Air Force.* State should submit its application directly to the installation commander and the appropriate District Engineer, Corps of Engineers, Department of the Army.

(c) *Navy.* State should submit its application directly to the District Public Works Officer of the Naval District involved.

(d) *Veterans Administration.* State should submit its application directly to the Director, Veterans Administration, Washington D.C.

Subpart F—Functional Replacement of Real Property in Public Ownership

AUTHORITY: 23 U.S.C. 315; 42 U.S.C. 4633; 49 CFR 1.48(b).

SOURCE: 39 FR 33312, Sept. 17, 1974, unless otherwise noted.

§ 712.601 Purpose.

This regulation prescribes Federal Highway Administration (FHWA) policies on functional replacement of real property in public ownership.

§ 712.602 Applicability.

The provisions of this regulation are applicable, to the extent practicable under State law, to all States and political subdivisions thereof that acquire real property for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. The provisions of this regulation do not apply to real property owned by utilities or railroads.

§ 712.603 Federal Lands.

Acquisition of real property in Federal ownership shall be in accordance with FHWA regulations on Federal land transfers in 23 CFR 712.501 et seq.

§ 712.604 Functional replacement.

(a) Where the State highway department (SHD) so requests, and can, pursuant to State law, incur costs for the functional replacement of real property in public ownership, Federal funds may participate in such replacement costs provided that it is demonstrated, and FHWA concurs, that functional replacement is in the public interest. Application of functional replacement proce-

dures is at the SHD's election, subject to FHWA approval of a SHD's request.

(b) For the purpose of this regulation, functional replacement is defined as the replacement of real property, either lands or facilities, or both, acquired as a result of a highway or highway related project with lands or facilities, or both, which will provide equivalent utility.

(c) Application of this policy, and Federal participation in costs pursuant thereto require that:

(1) The property to be functionally replaced is in public ownership,

(2) State law permits the incurrence of functional replacement costs,

(3) FHWA has concurred that functional replacement is in the public interest,

(4) FHWA has granted authorization to proceed on such basis prior to incurrence of costs,

(5) The functional replacement actually takes place, and the costs of replacement are actually incurred, and

(6) Replacement sites and construction are in compliance with existing codes, laws, and zoning regulations for the area in which the facility is located.

§ 712.605 Federal participation.

(a) Federal funds may participate in functional replacement costs on the following basis:

(1) The actual functional replacement cost of the facilities required to be replaced, and

(2) The appraised current fair market value of the land to be acquired for highway purposes when the owning agency has land on which to relocate the facilities, or the reasonable costs of acquiring a functionally equivalent substitute site where lands in the same public ownership are not available or suitable.

(b) Costs of increases in capacity and other betterments are not eligible for Federal participation except those necessary to replace utility; those required by existing codes, laws, and zoning regulations; and those related to reasonable prevailing standards for the type of facility being replaced.

(c) Where it is found that the appraised fair market value of the property to be acquired exceeds the cost of functional replacement. Federal funds may participate in the fair market value amount.

§ 712.606 Procedures.

(a) During the early stages of project development, SHD officials should meet with the owning agency to discuss the effect of a possible acquisition and potential application of functional replacement procedures. The results of discussions and decisions concerning functional replacement should be included in negative declarations and environmental impact and section 4(f) statements if required on a project.

(b) At the earliest practicable time, the SHD shall have the property appraised and establish an amount it believes to be just compensation, and shall advise the owning agency of the amount established. Subject to the requirements of this regulation, the owning agency has the option of accepting the amount of compensation established by the appraisal process or accepting functional replacement. The owning agency may waive its right to have an estimate of compensation established by the appraisal process if it prefers functional replacement.

(c) If the owning agency desires functional replacement, it should initiate a formal request to the SHD, and fully explain why it would be in the public interest.

(d) If the SHD agrees that functional replacement is necessary and in the public interest, it must submit a specific request for FHWA concurrence. The request should include:

(1) Cost estimate data relative to contemplated solutions,

(2) Agreements reached at meetings between the SHD and the owning agency, and

(3) An explanation of the basis for its request.

The request shall include a statement that replacement property will be acquired in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable FHWA regulations.

(e) After concurrence by FHWA that functional replacement is in the public interest, FHWA may, at SHD request, authorize the SHD to proceed with the acquisition of the substitute site and to proceed with physical construction of minor structures, or, in the case of major improvements, to proceed with development of detailed plans, specifications and estimates.

(f) The plans, specifications, and estimates, and modifications thereof, shall be submitted to FHWA for review and approval in accordance with established procedures. Where major improvements are involved, advertising for bids and letting of the contract to construct the replacement facility may follow the general procedures utilized by the owning agency, if acceptable to the SHD and FHWA. The submission, where applicable, shall include provisions for SHD inspection during construction of the replacement facility.

(g) Prior to FHWA concurrence in the award for actual construction, an agreement shall be entered into setting forth the rights, obligations and duties of each party with regard to the facility being acquired, the acquisition of the replacement site, and the construction of the replacement facility. The executed agreement shall also set forth how the costs of the new facility are to be shared between the parties.

(h) The SHD's request for final payment shall include:

(1) A statement signed by an appropriate official of the owning agency and the SHD certifying that the cost of the replacement facility has actually been incurred in accordance with the provisions of the executed agreement.

(2) The statement shall also certify that a final inspection of the facility was made by the SHD and owning agency and that the SHD is released from any further responsibility.

Subpart G—Right-of-Way Revolving Fund

AUTHORITY: (23 U.S.C. 108(c) and 315); 49 CFR 1.48(b); 23 CFR 1.32; secs. 7(c), (d), and (e) of the Federal-Aid Highway Act of 1968 (82 Stat. 819); (42 U.S.C. 4626).

SOURCE: 39 FR 26421, July 19, 1974, unless otherwise noted. Redesignated at 39 FR 28629, Aug. 9, 1974.

§ 712.701 Purpose.

To prescribe Federal Highway Administration (FHWA) policy and procedure for the advance acquisition of rights-of-way using the right-of-way revolving fund established under 23 U.S.C. § 108 (c).

§ 712.702 Policies.

(a) A revolving fund has been established for the purpose of acquiring rights-of-way for future construction of highways on any Federal-aid system.

(b) The funds advanced may be used to pay the entire costs (State and Federal share) of projects for the acquisition of rights-of-way, including related moving and relocation payments and last resort housing, utility relocations, and the net cost to the State of property management. Advancement of cash, repayment of cash, and accounting requirements shall be in accordance with 23 CFR Part 130 Subpart D, 39 FR 18093.

(c) Revolving funds and obligational authority will be allocated by FHWA to individual projects on a need-for-and-ability-to-use basis.

(d) Actual construction of a highway on rights-of-way with respect to which revolving funds are advanced shall be commenced within a period of not less than 2 years nor more than 10 years following the end of the fiscal year in which the advance was made to the right-of-way project, unless FHWA in its discretion shall provide an earlier termination date.

[39 FR 26421, July 19, 1974. Redesignated at 39 FR 28629, Aug. 9, 1974 and amended at 40 FR 8948, Mar. 4, 1975]

§ 712.703 Procedures.

(a) If a State highway department anticipates using the revolving fund during the next fiscal year, it shall by April 1 submit to FHWA an estimate of its total needs from the fund for the following fiscal year. Subsequent to review of the States' requests, the Regional Federal Highway Administrator will, by April 15 of each year, submit a request to the Land Acquisition Division, Office of Right-of-Way, for an allocation of funds to meet the needs of his region for the following fiscal year. The FHWA will be advised on the amount of revolving funds available after July 1 of each year. Based on this information, allocations will be made to each Regional Federal Highway Administrator.

(b) When a State highway department has a project it wishes to finance from the revolving fund or additional funds are needed for an existing revolving fund project, a letter asking for allocation of funds shall be submitted to FHWA.

(c) If funds are available, FHWA will allocate them to a specific project and authorize obligation of such funds.

(d) After the State has been advised of fund allocation, the project shall be

programed, and right-of-way work shall be authorized by FHWA under regular Federal-aid procedures. Each regular project prefix number shall be preceded by the letter Q. The FHWA letter of authorization to proceed shall constitute an obligation of the right-of-way revolving fund. Revolving fund projects are subject to environmental, location, and design requirements in the same manner as regular Federal-aid projects.

(e) All right-of-way work on revolving fund projects shall be accomplished in accordance with procedures and requirements applicable to regular Federal-aid projects.

(f) If situations should develop which prevent work from progressing on individual right-of-way revolving fund projects in a timely manner, the State shall notify FHWA so that the obligational authority may be withdrawn.

PART 713—RIGHT-OF-WAY—THE PROPERTY MANAGEMENT FUNCTION

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- 713.303 Definitions.
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SOURCE: 39 FR 34651, Sept. 27, 1974, unless otherwise noted.

Subpart A—Property Management

AUTHORITY: 23 U.S.C. 315; 42 U.S.C. 4633 and 4651(b); 23 CFR 1.32; and 49 CFR 1.48 (b).

§ 713.101 Purpose.

This Subpart prescribes Federal Highway Administration (FHWA) policies and procedures for the management of real property acquired in connection with Federal-aid highway projects.

§ 713.102 Applicability.

The policies in § 713.103 are applicable to all State and political subdivisions thereof that manage real property acquired for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. States are encouraged to adopt these procedures for all projects in which Federal funds will participate in any part of the project. Section 713.103(b) is applicable to the greatest extent practicable under State law, to all projects in which Federal funds will participate in any part of the cost of the project.

§ 713.103 Policies and procedures.

(a) The State highway department (SHD) shall establish property management policies and procedures that will assure control and administration of lands and improvements acquired for right-of-way purposes. These procedures shall establish:

(1) Property records showing:

- (i) An inventory of all improvements acquired as a part of the right-of-way;
- (ii) An accounting of the property management expenses and the rental payments received; and
- (iii) An accounting of the disposition of improvements and the recovery payments received.

(2) Methods for accomplishing the clearing of right-of-way when such clearance is performed separately from the contract for the physical construction of the project.

(3) The methods for managing the rodent control program.

(4) The methods for employing private firms or public agencies for the management of real property.

(5) The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

(b) If the acquiring agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short term occupier.

(c) Property management activities shall be handled in a manner consistent with the public interest and designed to

reflect the maximum long-range public benefit.

(d) The acquiring agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

(e) Clearing acquired improvements under a clearing contract is considered:

(1) A right-of-way item when the clearing is performed separately from the contract for physical construction. The applicability of the provisions of Volume 6, Chapter 4, of the Federal-Aid Highway Program Manual¹ shall be determined in accordance with the criteria set forth for the requirement of wage determinations in the FHWA Labor Compliance Manual.²

(2) A construction item within the provisions of Volume 6, Chapter 4, of the Federal-Aid Highway Program Manual² when the clearing is performed as a part of the physical construction contract.

(f) Rodent control procedures shall assure that the acquiring agency:

(1) Determines and documents the need for extermination services through periodic field inspections.

(2) Coordinates with other interested agencies, such as State, county, and city health departments, and

(3) Completes required extermination measures prior to demolition or removal of improvements.

(g) Acquired rights-of-way shall be maintained in a manner which will prevent or correct problems such as illegal dumping or disposal of rubble, debris, and garbage on cleared Federal-aid highway right-of-way until needed for construction.

(h) Where the acquired right-of-way includes areas for future construction, in addition to that required for immediate construction, the SHD may permit or lease the temporary use of this area until it is needed for highway purposes. The SHD may allow this temporary use when:

¹ The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, D.C. 20590.

² The FHWA Labor Compliance Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, D.C. 20590.

(1) The FHWA has approved temporary right-of-way limits within the overall right-of-way;

(2) The integrity and safety of the highway facility constructed elsewhere on the right-of-way are assured; and

(3) There is no decrease in the extent of access control to the highway facility constructed elsewhere on the right-of-way.

Subpart B—Management of Airspace

AUTHORITY: 23 U.S.C. 142(g); 23 U.S.C. 315; 23 CFR 1.23; 23 CFR 1.32; 49 CFR 1.48; Part 21.

§ 713.201 Purpose.

To prescribe Federal Highway Administration (FHWA) policies relating to the management of airspace on Federal-aid highway systems for nonhighway purposes.

§ 713.202 Applicability.

(a) The provisions of this Subpart apply to the use of airspace on the Federal-aid highway systems, except as provided in paragraph (b) of this section.

(b) This Subpart does not apply to railroads and public utilities which cross or otherwise occupy Federal-aid highway rights-of-way, nor to relocations of railroads or utilities for which reimbursement is claimed under Subparts H and E of Part 140 of this Chapter; joint development and multiple use of highway rights-of-way as covered in Volume 7, Chapter 7, section 8 of the Federal-Aid Highway Program Manual;¹ and bike-ways and pedestrian walkways as covered in part 652 of this chapter.

§ 713.203 Definition.

Air space, as used in this Subpart, is that space located above, at, or below the highway's established gradeline, lying within the approved right-of-way limits.

§ 713.204 Policies.

(a) Where a State highway department (SHD) has acquired sufficient legal right, title, and interest in the right-of-way of a highway on a Federal-aid system to permit the use of certain airspace

¹ The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, D.C. 20590.

for nonhighway purposes, and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility, the right to temporary or permanent occupancy or use of such airspace may be granted by the SHD subject to prior FHWA approval.

(b) The airspace required to accommodate foreseeable future expansion of the highway facility may not be used for nonhighway purposes except under the provisions of Subpart A of this part, relating to property management.

(c) In any case where sufficient land exists within the publicly acquired rights-of-way of any Federal-aid highway system to accommodate needed rail or nonhighway public mass transit facilities and where this can be accomplished without impairing automotive safety or future highway improvements, the FHWA may authorize a SHD to make such lands and rights-of-way available without charge to a publicly owned mass transit authority for such purposes whenever it may deem that the public interest will be served thereby.

(d) If found to be consistent with highway designs, any portion of right-of-way may be used for green strips, small parks, play areas, parking or other highway related public use, or for any other public or quasi-public use which would assist in integrating the highway into the local environment and enhancing other publicly supported programs. Normally, the SHD should retain supervision and jurisdiction over such lands but could enter into agreements with local political subdivisions relative thereto.

(e) An individual, company, organization, or public agency desiring to use airspace as defined herein shall submit an application therefor to the SHD in a manner and form deemed appropriate by the SHD. Applications, including a proposed airspace agreement, shall be forwarded to the FHWA together with SHD recommendations for approval and any necessary supplemental information. The submission shall affirmatively provide for adherence to all policy requirements contained in this Subpart where such are appropriate to the intended use.

(f) All nonhighway use of airspace shall be covered by a properly executed

airspace agreement. The agreement shall contain the following:

(1) The party responsible for developing and operating the airspace.

(2) A general statement of the proposed use.

(3) The general design for the use of the space, including any facilities to be constructed, and such maps, plans, or sketches as are necessary to set out pertinent features in relation to the highway facility.

(4) A detailed three-dimensional description of the space to be used, except when the surface area beneath an elevated highway structure or adjacent to a highway roadway is to be used for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, and other similar uses. In such cases, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description.

(5) Provision that any significant revision in the design or construction of a facility described in subsection 5f(3) above shall receive prior approval by the SHD subject to concurrence by the FHWA.

(6) Provision that any change in the authorized use of airspace shall receive prior approval by the SHD subject to concurrence by the FHWA.

(7) Provision that such airspace shall not be transferred, assigned, or conveyed to another party without prior SHD approval subject to concurrence by the FHWA.

(8) Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

(9) Provision for the agreement to be revoked if the agreement is violated and such violation is not corrected within a reasonable length of time after written notice of noncompliance has been given. Further, that in the event the agreement is revoked and the SHD deems it necessary to request the removal of the facility occupying the airspace, the removal shall be accomplished by the responsible party in a manner prescribed by the SHD at no cost to the FHWA. An exception to this provision is permitted when the improvements revert to the State upon termination of the agreement.

(10) When deemed necessary by the SHD or the FHWA, provision for adequate insurance by the responsible party for the payment of any damages which may occur during or after construction of the airspace facilities to hold the State harmless. Exception to this requirement may be made where the proposal is for the use by a public or quasi-public agency, when such agency is assigned the specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.

(11) Provision for the SHD and authorized FHWA representatives to enter the airspace facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary.

(12) Provision that the facility to occupy the airspace will be maintained so as to assure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event the responsible party fails in its maintenance obligations, there will be provision for the SHD to enter the premises to perform such work.

(13) Appropriate provisions of Appendix "C" of the State's Civil Rights Assurances^{*} with respect to Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21.

(g) Use of air space beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.

(h) The proposed use of airspace above the established gradeline of the highway shall not, at any point between two points established 15 feet beyond the two outer edges of the geometric section (highway prism) of the highway, extend below a horizontal plane which is at least 16 feet 4 inches above the gradeline of the highway, or the minimum vertical clearance plus 4 inches as approved by the State,

except as necessary for columns, foundations or other support structures. Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the grade-line of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above, when justified by the SHD, may be considered on an individual basis by the FHWA.

(i) Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

(j) The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the SHD. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when the SHD determines and the FHWA concurs that such medians and outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the SHD and the FHWA. No supports shall be located in the ramp gores, or in a position so as to interfere with the signing necessary for the proper use of the ramp.

(k) The use of airspace shall not result in either highway or nonhighway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.

(l) Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway or accidents resulting from nonhighway uses shall be provided. Airspace facilities shall not be approved for construction over or under the highways, unless the plans therefor contain adequate provisions, acceptable to the SHD and the FHWA, for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.

^{*} Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the State Highway Department or at the Federal Highway Administration; 400 7th Street SW., Washington, D.C. 20590.

(m) Any airspace facility shall be fire resistant in accordance with the provisions of the local applicable building codes found to be acceptable by the SHD and the FHWA. Such airspace facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the SHD or the FHWA to be a hazard to highway or non-highway users. Proposals involving the construction of improvements in airspace should be approved by the State authority responsible for fire protection standards. In cases where the SHD or the FHWA questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.

(n) No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location, assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely affect natural ventilation. The SHD shall determine such lengths for each particular case, subject to FHWA concurrence. Exceptions may be considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end, the underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by the SHD.

(o) The design, occupancy, and use of any structure over or under a highway facility shall be such that neither the use, safety, appearance, nor the enjoyment of the highway will be adversely affected by fumes, vapors, odors, drippings, droppings, or discharges of any kind therefrom.

(p) On-premise signs, displays, or devices may be erected on structures occupying highway airspace, but shall be restricted to those indicating ownership and type of on-premise activities and

shall be subject to regulation by the SHD and the FHWA with respect to number, size, location, and design.

(q) Construction of any structure above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by the SHD and the FHWA.

(r) Where either the SHD or the FHWA is of the opinion that the proposed use of airspace requires changes in or additions to existing highway facilities for the proper operation and maintenance of highways, such facilities shall be provided without cost to Federal funds. There may be exception to this policy when the proposed use is for highway related or other public or quasi-public use which would assist in integrating the highway into the local environment and enhance other publicly supported programs. This provision is not intended to expand existing limitations upon expenditures from the highway trust fund, nor is it intended to conflict with the provisions of Volume 7, Chapter 7, section 8, of the Federal-Aid Highway Program Manual,⁵ relating to joint development of highway corridors and multiple use of roadway properties.

(s) Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction when necessary.

(t) Permission shall not be granted for any use of airspace which does not conform with the provisions of current, appropriate Federal Aviation Administration regulations.

(u) Approval for the use and occupancy of highway right-of-way for the parking of motor vehicles shall be granted only if proper consideration has been given to the need for the following:

(1) Parking design or arrangement to assure orderly and functional parking.

(2) Plantings or other screening measures to improve the esthetics and appearance of the area.

(3) Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.

⁵ The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration: 400 7th Street SW., Washington, D.C. 20590.

(4) Access for fire protection and fire fighting equipment.

(v) Disposition of income received from the authorized use of airspace shall be the SHD's responsibility and credit to Federal funds is not required.

§ 713.205 Inventory.

The SHD shall maintain an inventory of all authorized uses of airspace. This inventory which shall be available for review by appropriate Federal and State agencies shall include but not be limited to the following items for each authorized use of airspace:

(a) Location by project, survey station, or other appropriate method.

(b) Identification of the authorized use of the airspace.

(c) A three-dimensional description or a metes and bounds description.

(d) As-built construction plans of the highway facility at the location where the use of airspace was authorized.

(e) Pertinent construction plans of the facility authorized to occupy the airspace.

(f) A copy of the executed airspace agreement.

Subpart C—Disposal of Rights-of-Way

AUTHORITY: 23 U.S.C. 315 and 319; 23 CFR 1.32; 42 U.S.C. 4651(9); 49 U.S.C. 1653(f); 49 CFR 1.48(b); and 49 CFR Part 21.

§ 713.301 Purpose.

This Subpart prescribes Federal Highway Administration (FHWA) policies and procedures for disposal of portions of highway rights-of-way no longer needed for highway purposes.

§ 713.302 Applicability.

(a) The provisions of this Subpart apply to disposals of rights-of-way where Federal-aid highway funds have participated in either the right-of-way or physical construction costs of a project.

(b) The provisions of this Subpart do not apply to the matters covered in Volume 6, Chapter 1, section 1, subsection 8, of the Federal-Aid Highway Program Manual.*

(1) Where a section of highway including the right-of-way is abandoned;

(2) Where only changes in access control are involved; and

*The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street, SW.; Washington, D.C. 20590.

(3) To relinquishments of highway facilities for continued use for highway purposes.

(c) The provisions of this section do not apply:

(1) Where whole sections of the Interstate System are withdrawn under the provisions of 23 U.S.C. 103(e)(2) and (4), or

(2) Where real property has been acquired for planned highway purposes, but because of environmental concerns, widespread public objections, or other similar considerations, the State highway department (SHD) or other appropriate State authority determines not to construct the planned highway facility.

[39 FR 34651, Sept. 27, 1974, as amended at 40 FR 3767, Jan. 24, 1975]

§ 713.303 Definitions.

For purposes of this Subpart the following definitions apply:

(a) Disposal—The conveyance for uses other than for highways of unneeded portions of highway rights-of-way (in contrast to relinquishment, which is the conveyance of a portion of a highway right-of-way or facility by a State highway department (SHD) to another government agency for highway use).

(b) Final Acceptance—(1) On Federal-aid construction projects, the date of acceptance of the physical construction by FHWA; and

(2) On Federal-aid right-of-way projects, where there is no Federal-aid construction, the date the FHWA determines to be the date of completion of the acquisition of the right-of-way authorized by FHWA to be acquired for the project.

§ 713.304 General requirements.

(a) The conveyance may be to any public entity or private party.

(b) When disposal of unneeded portions of highway rights-of-way involve a change in the access control line, provisions of Volume 6, Chapter 1, section 1, subsection 8, of the Federal-Aid Highway Program Manual¹ also apply.

(c) Federal, State and local conservation, recreation, park, or other appropriate agencies shall be afforded the op-

¹The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street, SW.; Washington, D.C. 20590.

portunity to acquire by purchase or donation in accordance with the State law, tracts of right-of-way being considered for disposal when there is indication that such tracts have a present or potential use for parks, conservation, recreational or related purposes. The SHD shall notify the appropriate agencies of its intention to dispose of unneeded portions of right-of-way which it considers to have present or potential use for the aforementioned purposes.

(d) Lands or interests therein are not to be disposed of if they are suitable for retention in order to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the highway.

(e) When right-of-way which has been acquired with Federal-aid participation is disposed of without requiring a credit to Federal funds, the instrument of conveyance shall contain appropriate provisions of "Appendix C" of the State's Title VI Civil Rights Assurances" with respect to the Civil Rights Act of 1964, and the Department of Transportation Regulations (49 CFR Part 21).

§ 713.305 Application for approval.

(a) A SHD shall submit a request to FHWA for prior approval to dispose of highway rights-of-way when the determination that the property is no longer needed for highway purposes occurs after:

(1) Final acceptance of a Federal-aid physical construction project, where Federal funds have participated in the right-of-way and construction costs, or construction costs only; or

(2) Final acceptance of a right-of-way acquisition project where Federal-aid highway funds do not participate in the cost of the physical construction.

(b) The request shall include:

(1) An explanation of why the right-of-way is not needed; and

(2) A plan which identifies the right-of-way proposed for disposition in relation to construction features and to the remaining right-of-way.

* Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the State Highway Department or at the Federal Highway Administration; 400 7th Street, SW; Washington, D.C. 20590.

§ 713.306 Excess right-of-way resulting from plan changes.

(a) Prior to final acceptance of a project, a portion of the right-of-way authorized by FHWA and acquired by the SHD may become unnecessary for the highway project. The unneeded portion usually results from plan changes. Right-of-way authorized and acquired to a natural boundary, but not incorporated into the right-of-way at the time of final acceptance of the project, is considered to be in the nature of a plan change.

(b) When the plan change results in excess right-of-way, a separate request for prior approval of disposal need not be submitted.

(c) Where credit to Federal funds is required in accordance with § 713.307 and the determination as to the unneeded right-of-way is made prior to final acceptance of the project, the disposal shall be accomplished prior to submission of the final voucher for the project or not later than 2 years from the time the highway facility is opened to traffic, whichever is earlier. However, prior to expiration of the specified time period, the SHD may request and the FHWA may approve an extension of the time. If the property is not sold within the approved time limit, the cost of acquisition of the unneeded portion must be credited to the project if Federal reimbursement has been made therefor.

§ 713.307 Credit to Federal funds.

(a) When right-of-way is disposed of to another governmental agency for public use, FHWA does not require a charge to the agency and no credit to Federal funds is required. If, for any reason, there is a payment to the State for the land transferred and Federal funds participated in the cost of acquisition of the right-of-way, the amount received shall be credited to Federal funds at the same pro rata share as Federal funds participated in the cost of acquisition of the right-of-way.

(b) If the disposal is to a part other than a Federal, State, or local governmental agency for public use, and Federal funds participated in the cost of acquisition of the right-of-way, there shall be a credit to Federal funds at the same pro rata share as Federal funds participated in the cost of acquisition of the right-of-way. The amount credited

shall be the result of disposal by one of the following means:

- (1) Public sale; or
- (2) Negotiations based on current appraised fair market value.
- (c) When a credit to Federal funds is required, the cost of disposition may be deducted from the sales price.

§ 713.309 Uneconomic remnants.

(a) An uneconomic remnant incorporated within the right-of-way limits loses its identity and becomes part of the right-of-way. Should it no longer be needed for highway purposes, disposal of the area would be in the same manner as any other portion of highway rights-of-way.

(b) Where the uneconomic remnant is not incorporated within the approved right-of-way limits, no FHWA approval to dispose of it is required, and no credit to Federal funds is necessary.

PARTS 714—719 [RESERVED]

PART 720—APPRAISAL¹

Subpart A [Reserved]

Subpart B—The Appraisal Function

- Sec.
- 720.200 Policy.
- 720.201 Appraisal and specialty reports.
- 720.202 Review of appraisal and specialty reports.
- 720.203 Qualifications of appraisers and reviewing appraisers.
- 720.204 Appraisal fees, contracts, and agreements.

AUTHORITY: 23 U.S.C. 315, 42 U.S.C. 4633, 23 CFR 1.32.

SOURCE: 38 FR 31828, Nov. 19, 1973, unless otherwise noted.

§ 720.200 Policy.

(a) *Purpose.* This section prescribes Federal Highway Administration policies related to the appraisal function.

(b) *Applicability.* The policies of this section are applicable, to the greatest extent practicable under State law, to all States and political subdivisions thereof that appraise or obtain appraisals of real property for any highway or highway related project in which Federal funds will participate in any part of the cost of the project.

(c) *Policies.* (1) Real property shall be appraised before the initiation of negotiations with an owner.

(2) The owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) The acquiring agency shall establish an amount which it believes to be just compensation for the acquisition of real property before the initiation of negotiations with an owner.

(4) Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property.

(5) Appraisers shall not give consideration to nor include in their appraisals any allowance for relocation assistance benefits.

§ 720.201 Appraisal and specialty reports.

(a) *Purpose.* This section prescribes Federal Highway Administration (FHWA) standards and requirements for the preparation of appraisal and specialty reports of real property needed for highway and related purposes. The purpose of the requirements is to obtain uniformity in the requisite elements of any and all appraisal reports while providing sufficient latitude for additional elements of an appraisal report to be determined by the complexity of the appraisal problem.

(b) *Applicability.* (1) Except as provided in paragraph (b) (2) and (3) of this section, the provisions of this section are applicable, to the greatest extent practicable under State law, to all States and political subdivisions thereof when they obtain appraisal and specialty reports for any parcel of real property for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

(2) The provisions of this section are not applicable to those programs and projects specifically excluded by law or by agreement with the FHWA.

(3) The provisions of this section are applicable to the appraisal of outdoor advertising signs and sites, junkyards, and scenic easements except as provided by Subpart D of Part 750 of this chapter or PPM 80-9.

¹ Retitled at 39 FR 10430, Mar. 20, 1974.

(c) *Number of reports.*—(1) *Appraisal reports.* When real property is to be acquired, the acquiring agency shall, before the initiation of negotiations, secure at least one appraisal report for each parcel to be acquired or damaged. At least two reports shall be obtained on all acquisitions for which the compensation for the acquisition can reasonably be expected to be in excess of \$50,000.

(2) *Specialty reports.* When a separate valuation of machinery, equipment, or other specialty items is necessary, one report is required when the value of or compensation for the items to be acquired can reasonably be expected to be under \$50,000, and two reports are required when the same can reasonably be expected to exceed \$50,000.

(3) *Exceptions.* The number of appraisal or specialty reports to be obtained on each parcel shall be as prescribed above except where the State has submitted a different plan of operation and it has been approved by FHWA. Deviation from the States' approved plan of operation is permitted where the State has requested and received prior FHWA approval to obtain a greater or lesser number of reports on specific parcels or projects.

(d) *Reimbursement.* (1) If otherwise eligible, Federal funds may participate in the cost of appraisal and specialty reports obtained by the State in accordance with its accepted plan of operation. Federal funds may participate in the cost of additional appraisal or specialty reports when:

(i) Additional reports have been requested by FHWA.

(ii) The State has requested and received prior FHWA approval for participation in the cost of additional reports. Requests and approvals may be on specific parcels or on a project by project basis covering specific types of acquisitions.

(2) Where the State prescribes a minimum payment, not to exceed \$100, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration, Federal participation shall be allowed if such payment is otherwise eligible.

(e) *Retention of reports.* A record copy of all appraisal and specialty reports shall be retained by the acquiring agency. Where correction or revision is necessary, the appraiser shall furnish corrected, revised or supplemental pages or portions

of the report for attachment to the record copy. All copies except the record copy of the report may be returned to the appraiser for necessary corrections or revisions. Any request for a substantive correction or revision of an appraisal or specialty report shall be documented in the acquiring agency's files.

(f) *Appraisal reports.* (1) For FHWA purposes, an appraisal report is a written document which, as a minimum, contains the following:

(i) The purpose of the appraisal which includes a statement of value to be estimated and the rights or interests being appraised.

(ii) Identification of the property and its ownership.

(iii) Statement of appropriate contingent and limiting conditions, if any.

(iv) An adequate description of the neighborhood, the property, the portion of the property or interest therein being acquired, and the remainder(s), if any.

(v) Identified photographs of the subject property including all principal aboveground improvements or unusual features affecting the value of the property to be acquired or damaged.

(vi) An identification or listing of the buildings, structures, and other improvements on the land as well as the fixtures which the appraiser considered to be a part of the real property to be acquired.

(vii) The estimate of just compensation for or resulting from the acquisition. In the case of a partial acquisition, where appropriate, either in the report or in a separate statement, a reasonable allocation of the estimate of just compensation for the real property to be acquired and for damages to remaining real property.

(viii) The data and analyses, or reference to same, to explain, substantiate and thereby document the estimate of just compensation.

(ix) The date(s) on which and/or as of which, as appropriate, the just compensation is estimated.

(x) The certification, signature, and date of signature of the appraiser.

(xi) Other descriptive material (maps, charts, plans, photographs).

(xii) The Federal-aid project number and parcel identification.

(2) Where an entire property is to be acquired, the estimate of just compensation would be the fair market value of the property. Where only a part of a property is to be acquired, the estimate of just compensation would be that

amount arrived at in accordance with the laws governing just compensation applicable to the acquiring agency, including those laws governing compensable and noncompensable items and the treatment of general and special benefits.

(3) Appraisal reports shall be independently prepared by qualified staff or fee appraisers.

(4) Appraisal reports shall be prepared in ink or typewritten, dated and signed by the individual making the appraisal prior to being submitted to a review appraiser.

(5) Each appraisal report shall contain an appraiser's certification incorporating as a minimum the requirements in Appendix I to § 720.203. A new certificate shall be prepared where there is a change in the appraisal report which affects the estimate of just compensation or changes the date of valuation.

(6) In estimating just compensation for the acquisition of real property, appraisal reports shall, to the greatest extent practicable under State law, disregard any decreased or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner.

(7) Documentation of estimates of value (either the before, the after, or the acquisition value), of damages, and/or of benefits shall be by the most applicable and appropriate means available. If support for the after value by the usual methods of market or income data or indications from severance damage studies is not feasible, the appraiser shall so state and explain why it is not feasible. In such instances, the appraiser must then fully explain the reasoning for his after value estimate.

(g) *Specialty Reports.* (1) For FHWA purposes, a specialty report is a written document which, as a minimum, contains the following:

(i) Statement of purpose of report.

(ii) Definition of value(s) reported, i.e., fair market value, salvage value, etc.

(iii) Identification of the property and its ownership.

(iv) Statement of appropriate contingent and limiting conditions, if any.

(v) Identification of the value problem.

(vi) The estimate of value(s).

(vii) The data and analysis to explain, substantiate and thereby document the estimate of value(s).

(viii) The date(s) on which and/or as of which the estimate of value(s) is made.

(ix) The certification, signature, and date of signature of the specialist.

(x) Other descriptive material (maps, charts, plans, photographs).

(xi) The Federal-aid project number and parcel identification.

(2) Specialty reports shall be independently prepared by qualified staff or fee specialists.

(3) Specialty reports shall be prepared in ink or typewritten, dated, and signed by the individual making the report prior to being submitted to a review appraiser or other specialist for review.

(4) Each specialty report shall contain a certification incorporating requirements similar to those in Appendix I to § 720.204. A new certificate shall be prepared where there is a change in the specialty report which affects the estimate of value or changes the date of valuation.

§ 720.202 Review of appraisal and specialty reports.

(a) *Purpose.* This section prescribes Federal Highway Administration (FHWA) standards and requirements for the review of appraisal and specialty reports of real property needed for highway and related purposes. The purpose of the requirements is to insure that the approved estimate of just compensation is reasonable and adequately supported.

(b) *Applicability.* (1) Except as provided in paragraph (b) (2) of this section, the provisions of this section are applicable, to the greatest extent practicable under State law, to all States and political subdivisions thereof when they review appraisal and specialty reports for any parcel of real property for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

(2) The provisions of this section are not applicable to those programs and projects specifically excluded by law, or by agreement with the FHWA.

(c) *Responsibility.* It is the responsibility of the appropriate acquiring agency to review all appraisal and specialty reports of real property to be acquired in connection with Federal-aid highway

programs or projects and to establish an amount which it believes to be just compensation for such acquisitions before the initiation of negotiations or the exercise of the power of eminent domain.

(d) *Estimate of just compensation by reviewing appraiser.* Qualified reviewing appraisers shall establish the amount of just compensation to be offered an owner for the acquisition of real property. To the greatest extent practicable under State law, any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded by the reviewing appraiser in establishing the compensation for the property. All estimates by a reviewing appraiser shall be documented and retained as a part of the project or parcel files.

(e) *Review of appraisal reports.* (1) The reviewing appraiser should field inspect the property appraised and the comparable sales considered by the appraiser(s) in arriving at either or both, as appropriate, the fair market value of the whole property and of the remainder(s). If a field inspection is not made, the file shall contain the reason(s).

(2) The reviewing appraiser shall examine the appraisal reports to determine that they:

(i) Are complete in accordance with § 720.201(f) and the State's appraisal specifications.

(ii) Follow accepted appraisal principles and techniques in the valuation of real property in accordance with existing State law.

(iii) Contain or make reference to the information necessary to explain, substantiate, and thereby document the conclusions and estimates of value and/or just compensation contained therein.

(iv) Include consideration of compensable items, damages and benefits, and do not include compensation for items non-compensable under State law.

(v) Contain an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which the appraiser considered to be a part of the real property to be acquired.

(vi) Contain the estimate of just compensation for or resulting from the acquisition

and where appropriate, in the case of a partial acquisition, either in the report or in a separate statement, a reasonable allocation of the estimate of just compensation for the real property acquired and for damages to remaining real property.

(3) Prior to finalizing his estimate of just compensation the reviewing appraiser shall request and obtain corrections or revisions of appraisal reports which do not substantially meet the requirements set forth in § 720.201(f) and in the State's appraisal report specifications. These shall be documented and retained in the parcel file.

(4) The reviewing appraiser shall initial and date his corrections and/or factual data supplements to an appraisal report.

(5) The reviewing appraiser shall place in the parcel file a signed and dated statement setting forth:

(i) His estimate of just compensation including, where appropriate, his allocation of compensation for the real property acquired and for damages to remaining real property, and an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which he considered to be a part of the real property to be acquired if such allocation or listing differs from that of the appraisal(s).

(ii) That as a part of the appraisal review there was or was not a field inspection of the parcel to be acquired and the comparable sales applicable thereto. If a field inspection was not made, he shall state the reason(s).

(iii) That he has no direct or indirect present or contemplated future personal interest in such property or in any monetary benefit from its acquisition.

(iv) That his estimate has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.

(v) His value estimate of items compensable under State law but not eligible for Federal reimbursement, if any.

(f) *Review of specialty reports.* (1) When a separate valuation of machinery, equipment or other specialty items is required and when the acquiring agency has retained the specialist, it shall have his report reviewed by a reviewing appraiser or other specialist before its distribution to the fee or staff appraisers. The individual responsible for the review should field inspect the property. If a

field inspection is not made, the file shall contain the reason(s).

(2) Before distribution to the appraisers, the reviewing appraiser or other specialist shall examine the reports to determine that they:

(i) Are complete in accordance with the requirements of § 720.2011(g) and the State's own requirements.

(ii) Follow accepted principles and techniques for the valuation of the subject of the report.

(iii) Contain the information necessary to explain, substantiate, and thereby document the conclusions and estimates of value contained therein.

(iv) Include consideration of compensable items and do not include compensation for items noncompensable under State law.

(3) Each acceptable estimate prepared by a specialist retained by the acquiring agency shall be made available to all appraisers for analysis and incorporation into their appraisal reports to the extent deemed appropriate by the individual appraiser.

(4) In those instances when a fee appraiser has retained a specialist and incorporated the specialist's report in his appraisal report, the review of the "package" shall be in accordance with the applicable review requirement in this section and those of the State.

§ 720.203 Qualifications of appraisers and reviewing appraisers.

(a) *Purpose.* This section establishes criteria for determining the qualifications of appraisers and reviewing appraisers used by a State highway department or other political subdivision of a State on federally assisted highway programs and projects. It also requires a State highway department to establish procedures for continuing evaluation of the qualifications and performance of both fee and staff appraisers and reviewing appraisers it employs.

(b) *Applicability.* (1) Except as provided in paragraph (b) (2) of this section, the provisions of this section are applicable to all State highway departments or other political subdivisions of a State which acquire real property for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

(2) The provisions of this section are not applicable to those programs and projects specifically excluded by law or

by agreement with the Federal Highway Administration (FHWA).

(c) *Qualifications.* It is the responsibility of the State highway department to establish qualifications required of all appraisers and reviewing appraisers used by it or its political subdivisions in connection with acquisition of real property for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. Such qualifications shall be consistent with the criteria for establishing the qualifications of appraisers and reviewing appraisers shown in Appendix I of this section.

(d) *Performance evaluation.* The State highway department shall establish procedures for continuing evaluation of the qualifications and performance of both fee and staff appraisers and reviewing appraisers that it employs. Sufficient information shall be maintained to show that the appraisers and reviewing appraisers used are qualified and do perform efficiently.

APPENDIX I

CRITERIA FOR THE ESTABLISHMENT OF MINIMUM QUALIFICATIONS FOR APPRAISERS AND REVIEWING APPRAISERS

The following criteria have been developed for use in establishing qualifications for appraisers and reviewing appraisers.

Staff appraisers

Appraiser classification Step I-----

Qualifications

College degree or 4 years verified active experience in the real estate field leading to a basic knowledge of real property valuation; or any combination of such experience and college study to provide a total of 4 years beyond high school graduation of education and experience of the types named.

Step II-----

At least 1 year of satisfactory training and work performance at Step I level that has led to a demonstrated knowledge and understanding of appraisal principles and techniques; or if initially employed at this level, basic education and experience requirements for Step I plus 2 years verified and active experience in the appraisal of less complex rural or urban real property.

**Appraiser
classification
Step III-----**

Qualifications

Two years progressively responsible and satisfactory work performance at Step II level that has demonstrated the knowledge and ability to appraise less complex rural and urban real property; or if initially employed at this level, the basic education and experience requirements of Step I plus 4 years of verified active experience in appraisal of both rural and urban real properties.

Step IV-----

Three years progressively responsible and satisfactory work performance at Step III level that has demonstrated the knowledge and ability to appraise complex rural and urban properties of all types; supervisory experience; and knowledge of overall right-of-way procedures including acquisition and condemnation practices.

Fee Appraisers

The State should secure the best qualified appraisers available for the particular job to be done. It is necessary for the appraiser's ability to be evaluated on an individual basis. Fee appraisers should have verified specific appraisal experience in the type of property they are employed to appraise.

Reviewing Appraisers

Reviewing appraisers should be thoroughly qualified appraisers and should have a background at least equivalent to Step III above. Every reviewing appraiser should have knowledge of the principles and techniques pertinent to appraising and the ability to independently appraise properties of the type for which he is to review appraisal reports by others.

[38 FR 31828, Nov. 19, 1973, as amended at 39 FR 9431, Mar. 11, 1974]

§ 720.204 Appraisal fees, contracts and agreements.

(a) **Purpose.** This section prescribes Federal Highway Administration (FHWA) requirements for contracts or agreements between an acquiring agency (a State highway department or other political subdivision of a State) and fee appraisers and specialists on federally assisted highway programs and projects. It also describes the conditions under which Federal funds will participate in the cost of employing fee appraisers and

specialists and prescribes criteria for establishing fees for such services.

(b) **Applicability.** (1) Except as provided in Paragraph (b) (2) of this section, the provisions of this section are applicable to the employment of fee appraisers and specialists by an acquiring agency for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

(2) The provisions of this section are not applicable to those programs and projects specifically excluded by law, or by agreement with the FHWA.

(c) **Employment of fee appraisers and specialists.** (1) Federal funds may participate in the cost of employing fee appraisers and specialists to provide cost studies, estimates or appraisals when:

(i) The staff personnel of the acquiring agency is insufficient to perform the work within a reasonable time.

(ii) A fee appraisal or specialist report is needed for use in a condemnation case.

(iii) The unusual character of the work requires the services of a person or persons with highly specialized knowledge and experience not available on the staff of the acquiring agency.

(2) Fee personnel shall be retained directly by the acquiring agency and required, by written contract, to personally perform the services contracted for, except as hereinafter provided. When services of a highly specialized nature are required to assist in the preparation of the appraisal, the employment of specialists should be handled by the acquiring agency. However, in appropriate instances such employment may be accomplished by the contract appraiser responsible for the appraisal of the entire property. If the latter course is followed, the acquiring agency shall reserve to itself the approval of the selection of the specialist by the contract appraiser.

(d) **Fees.** (1) The basis of payment set forth in the agreement covering more than one parcel shall not be computed on an average rate per parcel. The agreement shall itemize the actual amount to be paid per parcel, or such itemization shall be by a separate statement.

(2) In instances where special use or other unusual properties are involved, the division engineer may give prior approval to the use of a per diem rate contracting method with a stated overall limit which should not be exceeded except by supplemental agreement.

(3) Provision shall be made in the agreement for a per diem rate to be paid to the fee appraiser or specialist in the event court appearances or conferences preparatory thereto become necessary. This contingent cost shall be separate and apart from the fee or the overall limit specified in the agreement for completion of the services covered by the agreement.

(4) There shall be no Federal reimbursement for compensation paid by an acquiring agency for revision or correction of a report required by the appraiser's or specialist's failure to comply with contract specifications and standards in the agreement.

(5) There shall be no Federal participation in the appraisal or specialist fee or the amount paid for a parcel where the appraisal or specialist fee is determined as a percentage of the appraised value or assessed value.

(6) The amount of the fee shall represent a fair payment for the services performed whether it be for the initial valuation, a new valuation occasioned by a change in the taking, or a subsequent updating requested by the acquiring agency. In the instance of a new valuation or updating, a flat percentage of the original fee is not acceptable as representative of fair payment. Experience of the acquiring agency and any other available guides should be considered in arriving at an equitable fee. A qualified individual from the acquiring agency's right-of-way organization should visit the project site to identify the valuation problem, determine the number and type of reports needed, and estimate a fee per parcel. The estimate shall be made prior to requesting a proposal from fee personnel and shall be retained in the acquiring agency's file. A predetermined schedule of fees for different types of properties may be utilized provided documentation to support such schedule(s) is available in the acquiring agency's files. In determining the basis of payment and the actual fees to be paid, consideration should be given to:

(i) The complexity of the appraisal or other work to be undertaken and the skills necessary to provide such services.

(ii) The number of parcels included in the assignment.

(iii) The amount of information and data provided fee personnel by the acquiring agency, and the extent of in-

formation that must be developed independently.

(iv) The location and conditions pertinent to the project for which the fee service is to be provided.

(v) The time allowed for performance of the assignment.

(e) *Requirements for contracts and agreements.* Contracts, agreements, or assignment letters for fee appraisal and specialist services shall contain as a minimum the following provisions and clauses:

(1) Date of agreement.

(2) The complete name and address of each party to the agreement whether individual, partnership, firm or corporation. If a corporation is one of the parties, identify the State in which it is incorporated. Where a contract is with a partnership, firm or corporation, the agreement or supplement thereto shall identify the person who will perform the valuation service and, if necessary, testify in a condemnation action.

(3) Federal-aid project number and location.

(4) Description of the work to be done in sufficient detail to show the nature and extent of the services contemplated.

(5) Provision for the appraiser or specialist to testify in court if the need arises.

(6) Specifications as to the content and format of reports.

(7) Data to be furnished by the acquiring agency.

(8) Date completed reports are due.

(9) The basis of payment for the services to be furnished.

(10) The following clause:

The appraiser (specialist) warrants that he has not employed or retained any company, firm or person, other than a bona fide employee working solely for him, to solicit or secure this agreement, and that he has not paid or agreed to pay any company, firm or person, other than a bona fide employee working solely for him, any fee commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the (agency) shall have the right to annul this agreement without liability.

(11) Provisions that would permit the negotiation for mutual acceptance of major changes in the scope, character, or estimated total cost of the work to be performed if such changes become necessary as the work progresses.

(12) Provision that would permit termination of the agreement by the ac-

quiring agency in case the appraiser (specialist) is not complying with the terms of the agreement, the progress or quality of work is unsatisfactory, or for other stated reasons. Provision covering the ownership of work completed or partially completed and basis of payment therefor in the event of termination of the agreement by the acquiring agency.

(13) Provision for a procedure for resolving any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties, conforming to the practice followed by the acquiring agency in resolving disputes in other contractual matters.

(14) An expressed prohibition against the subletting or transfer of any of the work except as is otherwise provided for in the agreement.

(15) Instructions that the appraiser (specialist) is to follow accepted principles and techniques in the valuation of real property in accordance with existing State law.

(16) Provision for itemizing the fee per parcel within the agreement or by a separate statement.

(17) Provision for updating reports at request of the acquiring agency.

(18) Provision for execution of certification statement. See Appendix 1 to this section for the certificate of appraiser and § 720.201(g)(4) for requirements of a specialist's certification.

(19) The clauses set forth in Appendix A of the Civil Rights Assurances.

(20) Properly executed signature and dates.

APPENDIX I

Federal Project No. _____
Parcel No. _____

CERTIFICATE OF APPRAISER

I hereby certify:

That I have personally inspected the property herein appraised and that I have also made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented in said appraisal or in the data book or report which supplements said appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with the acquisition of

right-of-way for a project to be constructed by the _____ of _____ with the assistance of Federal-aid highway funds, or other Federal funds.

That such appraisal has been made in conformity with the appropriate State laws, regulations and policies and procedures applicable to appraisal of right-of-way for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are non-compensable under the established law of said State.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any monetary benefit from the acquisition of such property appraised

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring agency of said State or officials of the Federal Highway Administration and I will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That my opinion of just compensation for the acquisition as of the ____ day of _____ 19____, is _____ based upon my independent appraisal and the exercise of my professional judgment.

(Date)

(Signature)

NOTE: Other statements, required by the regulations of an appraisal organization of which the appraiser is a member or by circumstances connected with the appraisal assignment or the preparation of the report, may be inserted where appropriate. Additionally, it is recommended that, to the extent practicable under State law, appropriate statements be included to cover the following provisions of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970:

a. The owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

b. Any decrease or increase in the fair market value of real property prior to the date of valuation, caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

PARTS 721—739 [RESERVED]

PART 740—RELOCATION ASSISTANCE**Subpart A—General**

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Sec.

- 740.78 Replacement housing payments to tenant-occupant for not less than 90 days who purchases.
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Subpart E—Mobile Homes

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Subpart F—Replacement Housing as Last Resort

- 740.111 Scope.
 740.112 General requirements.
 740.113 Applicability.
 740.114 Programming and authorization.
 740.115 Federal participation.
 740.116 Preliminary housing studies.
 740.117 Replacement housing plan.
 740.118 Implementation of housing plan.
 740.119 Advice and technical assistance by HUD and other federal agencies.

Appendix A—Moving expense schedule form.
 Appendix B—Computation of increase interest cost.

AUTHORITY: Pub. L. 91-646, 84 Stat. 1894, (42 U.S.C. 4601 et seq.). 49 CFR Part 25, 23 CFR 1.32. OMB Circular A-103.

SOURCE: 38 FR 29971, Oct. 31, 1973, unless otherwise noted.

Subpart A—General**§ 740.1 Purpose.**

(a) The purpose of this part is to insure to the maximum extent possible the prompt and equitable relocation and reestablishment of persons, businesses, farmers and nonprofit organizations displaced as a result of Federal and Federal-aid highway construction. The requirements contained in this part are intended to establish a means of providing relocation services and of making moving cost payments, replacement housing cost payments and other expense payments so that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

(b) This part requires the Federal Highway Administration (FHWA) and the States to follow the requirements set forth herein so that every individual displaced because of Federal or Federal-aid

highway programs will have or will have been offered a comparable decent, safe and sanitary dwelling to move into upon being required to vacate the dwelling acquired. It also requires that relocation services be furnished and that payments be made to those who are required to relocate to compensate for, in whole or in part, costs incurred for moving, replacement housing, and certain other expenses. In addition, it provides for hearing and appeal procedures to encourage amicable resolution of controversies that may arise.

§ 740.2 Effective date.

(a) The additional monetary payments prescribed in this part shall be provided to the extent that a State can comply under its laws, to all persons eligible therefor on and after January 2, 1971.

(b) The provisions of this part, exclusive of the monetary payments, became effective on July 1, 1971, or at an earlier date if a State desired, and the services and other requirements described herein shall be provided by a State to the extent that such State is able to comply herewith under its laws.

(c) After July 1, 1972, the payments, services and other requirements of this part shall be provided by all States.

§ 740.3 Definitions.

As used in this part—

(a) **Person** means any individual, partnership, corporation, or association.

(b) **Family** means two or more individuals, one of whom is the head of a household, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit. Where two or more individuals occupy the same dwelling with no identifiable head of a household, they shall be treated as one family for replacement housing payment purposes.

(c) **Displaced person** is any person who:

(1) Is in occupancy at the initiation of negotiations for the acquisition of the real property in whole or in part.

(2) Is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date.

(3) Moves from the real property or moves his personal property from the real property subsequent to the earliest date established in paragraph (c) (1) or (2) of this section.

(4) The real property is subsequently acquired.

(5) If the move occurs after a written order to vacate is issued, the occupant is eligible even though the property is not acquired.

(d) **Initiation of negotiations for the parcel** means the date the acquiring agency makes the first personal contact with the owner of the parcel or property to be acquired for a Federal or Federal-aid project or his designated representative where price is discussed.

(e) **Relocatee** means any person who meets the definition of a displaced person.

(f) **Dwelling** means any single family house, a single family unit in a multi-family building, a unit of a condominium or cooperative housing project, a mobile home, or any other residential unit.

(g) **Comparable replacement dwelling** is a dwelling which is:

(1) Decent, safe, and sanitary as defined in § 740.4.

(2) Functionally equivalent and substantially the same as the acquired dwelling with respect to:

(i) Number of rooms.

(ii) Area of living space.

(iii) Type of construction.

(iv) Age.

(v) State of repair.

(3) Fair housing is open to all persons regardless of race, color, religion, sex, or national origin, and consistent with the requirements of 42 U.S.C. 3601-3619 and 3631.

(4) In areas not generally less desirable than the dwelling to be acquired in regard to:

(i) Public utilities.

(ii) Public and commercial facilities.

(5) Reasonably accessible to the relocatee's place of employment.

(6) Adequate to accommodate the relocatee.

(7) In an equal or better neighborhood.

(8) Available on the market to the displaced person.

(9) Within the financial means of the displaced family or individual.

(h) **Business** means any lawful activity, excepting a farm operation, conducted primarily:

(1) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing or marketing of products, commodities or any other personal property.

(2) For the sale of services to the public.

(3) By a nonprofit organization.

(4) Solely for the purpose of moving and related expenses under § 740.57, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display(s), whether or not such display(s) is located on the premises on which any of the above activities are conducted.

(i) *Nonprofit organization* means a corporation, partnership, individual or other public or private entity, engaged in a business, professional or instructional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession or institutional activity on the premises.

(j) *Farm operation* means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support. The term "contributing materially" used in this definition means that the farm operation contributes at least one-third of the operator's income. However, in instances where such operation is obviously a farm operation it need not contribute one-third to the operator's income for him to be eligible for relocation payments.

(k) *Federal agency* means any department, agency or instrumentality in the Executive Branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

(l) *State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands and any political subdivision thereof.

(m) *State agency* means the National Capital Housing Authority, the District of Columbia Redevelopment Land

Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State(s).

(n) *Federal financial assistance* means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(o) *Mortgage* means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(p) *Owner* means an individual(s):

(1) Owning, legally or equitably, the fee simple estate, a life estate, a 99-year lease or other proprietary interest in the property.

(2) The contract purchaser of any of the foregoing estates or interests.

(3) Who has succeeded to any of the foregoing interests by devise, bequest, inheritance, or operation of law. For the purpose of this part in the event of acquisition of ownership by any of the foregoing methods in this paragraph, the tenure of ownership, not occupancy, of the succeeding owner shall include the tenure of the preceding owner.

(q) [Reserved]

(r) *Last resort housing project* means a project that is separately programmed and authorized for the construction, purchase and/or rehabilitation of dwellings as replacement housing units for highway displacees when an adequate supply of available comparable dwellings cannot be found on the open market. These housing units are obtained as "housing replacement as last resort" as provided in Title II, of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) (42 U.S.C. 4601 et seq.).

(s) *Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(t) *HUD* means the area office or, where none exists, the regional office of the Department of Housing and Urban Development.

(u) *180-day owner* is a displaced person who has owned and occupied the dwelling from which he is being displaced for at least 180 consecutive days im-

mediately prior to the initiation of negotiations, or the date of vacation if a notice of intent to acquire is given, whichever is earlier.

(v) 90-day owner is a displaced person who has owned and occupied the dwelling from which he is being displaced for less than 180 days, but not less than 90 consecutive days immediately prior to the initiation of negotiations, or the date of vacation if a notice of intent to acquire is given, whichever is earlier.

(w) Tenant is a displaced person who has occupied a rental dwelling unit for at least 90 consecutive days immediately prior to the initiation of negotiations, or the date of vacation if a notice of intent to acquire is given, whichever is earlier.

(x) Rent Supplement is the amount necessary to enable a displaced person to lease or rent a comparable replacement dwelling for a period not to exceed 4 years. Such amount may not exceed \$4,000 as provided in 42 U.S.C. 4624.

(y) The term construction of comparable replacement housing of last resort, shall include the provision of replacement housing as utilized by the State to provide housing as a last resort by:

(1) Purchase of land and/or existing dwellings.

(2) Construction of new comparable housing capable of filling the needs of those displaced.

(3) Relocation of existing housing purchased by the State for right-of-way purposes.

(4) Rehabilitation of dwellings purchased by the State for right-of-way purposes or acquired under the provisions of (1) above.

(5) Negotiated purchases of housing owned by other public or private agencies or individuals and to be moved from their existing location including rehabilitation, etc.

(6) Joint development and/or subsidization in coordination with other Governmental agencies.

(7) Combinations of these items.

(8) Any other reasonable means to provide replacement housing.

[38 FR 29971, Oct. 31, 1973, as amended at 39 FR 1428, Jan. 9, 1974]

§ 740.4 Standards for decent, safe and sanitary housing.

(a) *Minimum requirements.* A decent, safe and sanitary dwelling is one which meets all of the following minimum requirements:

(1) *Conforms to State and local housing codes and ordinances.* Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations.

(2) *Water.* Has a continuing and adequate supply of potable safe water.

(3) *Kitchen requirements.* Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water and an adequate sewage system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. When these facilities are not so required by local codes, ordinances or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.

(4) *Heating system.* Has an adequate heating system in good working order which will maintain a minimum temperature of 70 degrees in the living area under local outdoor design temperature conditions. A heating system will not be required in those geographical areas where such is not normally included in new housing. Bedrooms are not included in the "living area" as referred to in this paragraph.

(5) *Bathroom facilities.* Has a bathroom, well lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system.

(6) *Electric system.* Has an adequate and safe wiring system for lighting and other electrical services. When the utility is not reasonably accessible and is not required by local codes, ordinances or custom, an exception may be approved by the Regional Federal Highway Administrator on a project basis.

(7) *Structurally sound.* Is structurally sound, weathertight, in good repair, and adequately maintained.

(8) *Egress.* Each building used for dwelling purposes shall have a safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multidwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level. In multi-

dwelling buildings of three stories or more the common corridor on each story must have at least two means of egress.

(9) *Habitable floor space.* Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet (70 square feet for mobile home) or habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking, or dining purposes and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, and unfurnished attics, foyers, storage spaces, cellars, utility rooms, and similar spaces.

(b) *Rental of sleeping rooms.* The standards for decent, safe, and sanitary housing as applied to rental of sleeping rooms shall include the minimum requirements contained in paragraph (a) (1), (4), (6), (7), and (8) of this section and the following:

(1) *Habitable floor space.* At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant.

(2) *Bathroom facilities.* Lavatory, bath, and toilet facilities that provide privacy including a door that can be locked if such facilities are separate from the room.

(c) *Approval of local code.* In those instances where a local housing code does not meet all the standards listed in this paragraph but is reasonably comparable, the agency providing relocation assistance may submit such code to the Regional Federal Highway Administrator for approval or disapproval as acceptable standards for decent, safe, and sanitary housing.

(d) *Exceptions.* Exceptions may be granted to decent, safe, and sanitary standards but requests should be limited to items and circumstances that are beyond the reasonable control of the relocatee to adhere to the standards. Approved exceptions shall not affect the computation of the replacement housing payment.

(1) *Exceptions for parcels.* In case of extreme hardship or other similar extenuating circumstances, an exception to the decent, safe, and sanitary charac-

teristics of replacement housing may be permitted in a particular case with the written concurrence of the Regional Federal Highway Administrator. For example, it is recognized that exceptional problems may arise with regard to large families meeting floor space requirements. In instances of this kind it would be appropriate to waive the square footage requirement on a parcel basis provided there is satisfactory bedroom space based on the age and sex of the occupants.

(2) *Exceptions for project or area.* The Associate Administrator for Right-of-Way and Environment may approve exceptions to the standards of this paragraph on a project or areawide basis where unusual conditions exist.

§ 740.5 Applicability.

(a) *Federal and Federal-aid project.* To the extent provided in § 740.2, the provisions of this part are applicable to any person who as of January 2, 1971, has not been displaced by any highway project on which Federal-aid highway funds or other Federal funds are or will be utilized.

(b) *Property acquired as required contribution.* All rights-of-way acquired by any State agency, county, town, or any other local governmental agency and furnished as a required contribution incident to a Federal or Federal-aid highway project shall not be accepted unless all the payments have been made and all the assistance and assurances have been provided as required by this part.

(c) *Property acquired by any agency.* Any Federal agency which acquires property for highway projects authorized under chapters 1 and 2, title 23, United States Code, shall provide the relocation services and payments described in this part. When real property is acquired by a State or local governmental agency for such a Federal project, the acquisition shall be deemed to be an acquisition by the Federal agency having authority over such project.

§ 740.6 Assurances of adequate relocation assistance program.

(a) *Statewide assurances.* No State highway department shall be authorized to proceed with any phase of any project which will cause the relocation of any person, or proceed with any construction project concerning any right-of-way acquired by the State without Federal

participation and coming within the provisions of § 740.5(a) until it has furnished satisfactory assurances on a statewide basis that:

(1) Relocation payments and services were or will be provided as set forth in this part.

(2) The public was or will be adequately informed of the relocation payments and services which will be available as set forth in § 740.10.

(3) To the greatest extent practicable no person lawfully occupying real property shall be required to move from his dwelling, or to move his business or farm operation, without at least 90 days written notice from the State of the date by which such move is required.

(b) *Project assurances.* No State shall be authorized to proceed with right-of-way negotiations on any project which will cause the relocation of any person until it has submitted specific written assurances that:

(1) *Comparable replacement housing.* Within a reasonable period of time prior to displacement comparable replacement dwellings will be available or provided (built if necessary) for each displaced person. Such assurance shall be accompanied by an analysis of the relocation problems involved and a specific plan to resolve such problems as described in § 740.12(b). Where right-of-way is acquired in hardship cases and/or for protective buying the required assurance together with an analysis of the relocation problems involved and a specific plan to resolve such problems shall be provided for each parcel or for the project.

(2) *Adequate relocation program.* The State relocation program is realistic and is adequate to provide orderly, timely and efficient relocation of displaced persons as provided in this part.

§ 740.7 Eligibility for participation of Federal-Aid Funds.

(a) *Reimbursement requirements.* Federal funds will participate only in the costs of relocating those persons in occupancy at the initiation of negotiations of the parcel or at the time written notice of intent to acquire or to vacate is issued, whichever is earlier, and to no subsequent occupants. Federal funds will participate in relocation payments to eligible persons when all of the following conditions have been met:

(1) *Program approval and authorization.* There has been approval of a Fed-

eral-aid program or project and authorization to proceed has been issued. Costs incurred at the conceptual stage may be charged to either preliminary engineering or right-of-way depending upon State procedures.

(2) *Person relocated.* When in fact a person has been or will be relocated by the project or from the right-of-way approved for such project.

(3) *Lawful costs.* When relocation costs are incurred in accordance with law.

(4) *Costs recorded as liability.* When relocation costs are recognized and recorded as a liability of the State in accounts of the State.

(5) *Project agreement executed.* After the project agreement has been executed for the particular project involved.

(b) *Interest acquired.* The type of interest acquired does not affect the eligibility of relocation costs for reimbursement provided the interest acquired is sufficient to cause displacement. In like manner, the terms under which a tenant is occupying property do not affect eligibility for Federal participation provided the tenant is actually displaced by the project and the occupancy is lawful.

(c) *Losses due to negligence.* Losses due to negligence of the relocated person, his agent or employees are not eligible for Federal participation.

(d) *Federal share.* (1) Until a State fully complies with all the provisions of this part, Federal fund participation shall be limited to the appropriate Federal share for the class of funds involved.

(2) If a State can fully comply with the provisions of this part, the Federal share of the first \$25,000 of the cost of providing relocation payments made to any displaced person pursuant to this part on account of any acquisition or displacement shall be 100 percent until July 1, 1972.

(3) Federal reimbursement for the cost of relocation payments in excess of \$25,000 to any one person, and for costs incurred after June 30, 1972, shall be determined in accordance with the appropriate Federal pro rata share for the class of funds involved.

(4) Federal reimbursement for the cost of providing relocation services shall be determined in accordance with the appropriate Federal pro rata share for the class of funds involved whether such services are provided by the State or by contract.

(e) *Administrative costs.* Only those costs directly chargeable to the highway project are eligible for Federal participation. The administrative and central office expenses of the State and any political subdivision or local public authorities under contract to perform certain phases of relocation services, payments or surveys are not eligible for Federal participation. The policies and procedures governing reimbursement for employment of public employees on Federal-aid projects are contained in Part 115 of this title.

(f) *Refusal of assistance.* A displaced person can refuse relocation services and still be eligible for payments. There is no requirement that he accept the services if he wants to relocate on his own. However, it would be necessary that he meet the decent, safe, and sanitary requirements and make application within the time limits to qualify for replacement housing payments.

(g) *Property not incorporated into right-of-way.* If a relocation is made necessary by an acquisition for the project, even though the property acquired is not incorporated within the final right-of-way, Federal funds may participate in relocation payments.

(h) *Advisory services to adjacent property.* Federal funds are authorized to participate in the cost of furnishing relocation advisory services to any person occupying property immediately adjacent to property acquired for a highway project when the head of the relocating agency determines that such person is caused substantial economic injury because of the acquisition.

§ 740.8 Organization requirements for administration of relocation assistance programs.

(a) *State organization and procedures.* Each State highway department shall have an individual whose primary responsibility is the administration of the State's relocation assistance program. The organization and procedures of the State agency which administers the relocation program shall provide as a minimum that:

(1) *Responsibility assigned on project basis.* Each right-of-way project where relocations will occur, shall have assigned to it one or more individuals whose primary responsibility is to provide relocation assistance. These individuals may have responsibility for more than one project where reasonable.

(2) *Local relocation office.* A local relocation office shall be established which is reasonably convenient to public transportation or within walking distance of each project when the State determines that the volume of work or the needs of the displaced persons are such as to justify the establishment of such an office. The determination whether or not to establish a local relocation office shall be made on an individual project basis and submitted to the division engineer for his approval or disapproval. These offices shall be open during hours convenient to the persons to be relocated, including evening hours when necessary. Consideration should be given to the employment of people in the local relocation office who are familiar with the problems of the area.

(3) *Information to be maintained on a project basis.* The following shall be maintained and provided for each project:

(i) Current and continuing lists of replacement dwellings available to persons without regard to race, color, religion, or national origin drawn from various sources, suitable in price, size, and condition for displaced persons to the extent they are available.

(ii) Current and continuing lists of comparable commercial properties and locations for displaced businesses.

(iii) Current data for such costs as security deposits, closing costs, typical downpayments, interest rates, and terms.

(iv) Maps showing the location of schools, parks, playgrounds, shopping, and public transportation routes in the area where applicable.

(v) Schedules and costs of public transportation where applicable.

(vi) Copies of the State's brochure explaining its relocation program, local ordinances pertaining to housing, building codes, open housing, consumer education literature on housing, shelter costs, and family budgeting.

(vii) Subscriptions for apartment directory services, neighborhood and metropolitan newspapers, etc. In addition, multiple listing services shall be maintained where available.

(4) *Contact with and exchange of information with other agencies.* Relocation officials shall maintain personal contact and shall exchange information with other agencies providing services useful to persons who will be relocated.

(i) Such agencies may include but not be limited to social welfare agencies.

urban renewal agencies, redevelopment authorities, public housing authorities, the Department of Housing and Urban Development, Veterans' Administration and Small Business Administration.

(ii) Personal contact shall be maintained with local sources of information on private replacement properties, including real estate brokers, real estate boards, property managers, apartment owners and operators, and homebuilding contractors.

(iii) The Department of Housing and Urban Development and Veterans' Administration procedures which provide for making properties acquired by them available for direct sale to persons to be relocated as a result of governmental action.

(iv) It is expected that in the application of these programs, to specific projects, the State will coordinate their actions with the local agencies responsible for administering these and other Federal programs.

(b) *State policy and procedure statement or manual*—(1) *Policy and procedure statement*. The State highway department shall provide and submit, under Point 31 of its policy and procedural statement, or in a manual form that accomplishes the same objective, the following information:

(i) *Organization*. The office in the State highway department which has statewide responsibility for implementing the relocation program, the director of that office and the State agency which will administer the relocation program.

(ii) *Number of personnel and job titles*. The estimated number and job titles of personnel having responsibilities for providing relocation payments and services in the central office and field offices as applicable. Indicate the title of the district office relocation assistance supervisor and show to whom he reports and his relationship to the district engineer and to the central office.

(iii) *Job descriptions and qualifications*. In the submission, the State highway department shall attach as exhibits the job descriptions and qualifications for each job title for both supervisory and field personnel unless otherwise submitted. The job classifications should provide a career ladder so that, as an employee gains experience and training, advancement can be made.

(2) *Contracts with other agencies*. The State highway department shall indicate to what extent it expects to con-

tract with other Federal, State, or local agencies to carry out the requirements of this part.

(3) *Relocation assistance and payments procedures*. The State highway department shall submit a complete description of the procedures followed for furnishing relocation services and for making relocation payments. The procedures, as a minimum, should include a description or explanation of the following items:

(i) Citation and effective date of the applicable law enabling the State to fully comply or a statement of the extent of the State's ability to comply with the relocation provisions of 42 U.S.C. 4601-4655 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) applicable to Federal and Federal-aid projects financed in any part by Federal funds.

(ii) Indicate the standards for accessibility of the relocatees to the relocation assistance offices, their office hours and the type of lists, maps, and other information to be maintained. Indicate the extent to which project or field offices will be used.

(iii) Indicate when and by whom personal contacts with owner-relocatees and tenants will be made.

(iv) Indicate the personnel, timing, methods, and procedures to be used for the preliminary investigations of approximate number of relocatees, availability of decent, safe, and sanitary replacement housing as provided in § 740.11.

(v) Indicate the personnel, methods, timing, and procedures to be used as provided in § 740.12(b) for obtaining an inventory of available housing; for correlating the needs of the relocatees with available housing; and for developing a relocation plan for the specific project.

(vi) Describe the procedures to be used by the State in providing public information through brochures, public hearings, newspapers, radio, television, and written descriptions of available assistance and payments for owners, tenants, businesses, farms, and nonprofit organizations. Attach a copy of brochures used by the State.

(vii) Describe the procedures for determining moving cost payments and/or schedules to which both owners and tenants are entitled. Attach fixed schedules as exhibits, where applicable.

(viii) Describe the procedures that will be followed in making replacement housing payment to owner-occupants

and tenants. Indicate who is responsible for determining replacement housing payments. Explain eligibility requirements. Indicate time limits and methods of applying for payments.

(ix) Describe the closing expenses that are payable. Attach a copy of a typical closing statement indicating such closing payments.

(x) Describe the method of computing increased interest cost.

(xi) Describe procedures utilized to assure that to the greatest extent practicable owners and tenants are not required to move without at least 90 days' written notice and when such written notice is given. Submit copy of notice.

(xii) Describe appeal procedures available to relocatees.

(xiii) Attach a copy of the assurances required by § 740.6(a).

(xiv) Attach a copy of all forms developed for carrying out the relocation program.

(4) *Duplicate payments under State eminent domain law prohibited.* The State highway department shall submit citation of applicable State legislation if, under the State law of eminent domain, the relocatee is entitled to receive any payment designed to have substantially the same general purpose and effect as the payments described in this part and for which Federal reimbursement is otherwise available. The Federal Highway Administrator's determination as to the purpose and effect of a State law shall govern Federal participation in such costs.

§ 740.9 Relocation contract procedures.

(a) *Relocation functions performed by another agency.* In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs for displaced persons, the FHWA or a State may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this part through any Federal or State agency having an established organization for conducting relocation assistance programs.

(b) *Agencies providing relocation assistance.* The State highway department shall furnish the following information concerning the agency, if other than the State highway department, which will

provide the relocation assistance required by this part.

(1) *Name.* The name and location of the agency.

(2) *Qualifications.* An analysis of the agency's present workload and of its ability to perform the requirements of this part.

(3) *Personnel.* The estimated number and the job titles of relocation personnel of the agency that will provide the relocation assistance for the project.

(c) *Contracting procedures.* Where a State highway department elects to have the relocation services and payments required under this part administered by another Federal, State, local governmental, or private agency having an established organization, it shall enter into a written contract or agreement to that effect with the agency it selects. The contract or agreement shall have prior approval by the division engineer and shall conform with the following:

(1) *Perform services and make payments.* Obligate the agency to perform the relocation assistance advisory services and make the relocation payments in accordance with the regulations of this part.

(2) *Retention of records.* Provide that the records required by § 740.14 will be retained by the agency administering the relocation program or turned over to the State highway department. The records shall be retained for a period of not less than 3 years after payment of the final voucher on each project, regardless of which agency retains them.

(3) *Available for inspection.* The records shall be available for inspection by representatives of the Federal Government at any reasonable hour.

(4) *Specify financial responsibilities.* Where the contract is with a public agency administering another Federal grant program, the contract shall specify the financial responsibilities of each to finance the relocation program required by this part.

(5) *Administrative costs.* Only those costs directly chargeable to the highway project are eligible for Federal participation.

(6) *Civil rights.* Contain the clauses set forth in 49 CFR Part 21.

(7) *Changes.* Provisions that would permit the negotiations for mutual acceptance of major changes in the scope, character, or estimated total cost of the work to be performed if such changes become necessary.

(8) *Revision or amendment of existing agreement or contracts.* Agreements or contracts in existence with local agencies on the effective date of this part must be revised or amended to include the additional requirements set forth herein and to provide for all the services and payments required by this part. If the terms of the existing agreement or contract do not permit such revision or amendment, supplementary contracts shall be executed to provide such requirements.

(9) *Adequate staff.* The division engineer in reviewing any such contract or agreement for approval shall give special attention to ascertain if the agency does in fact have a staff to adequately and properly perform the functions required by the contract or agreement.

(d) *Lands acquired by local public agency.* The provisions of this paragraph govern the application of relocation procedures where lands are acquired by a local public agency.

(1) *Lands acquired and cleared prior to location of highway.* Where lands are acquired and cleared by the local public agency prior to the receipt of written advice from the State highway department concerning the location of a proposed highway or a request for reservation or conveyance for highway purposes, the provisions of this part will not apply. In such cases, relocations would be handled under the local public agency procedures and Federal participation would be limited to the applicable pro rata amount of the fair market value as determined by mutually acceptable appraisal of the bare land or cost of the local public agency as provided in FHWA right-of-way regulations and procedures. Authorization by the FHWA to acquire the right-of-way from the local public agency should not be given until the applicable public hearing requirements have been met. Where work is undertaken under the TOPICS program which requires the relocation of any person the provisions of this part shall apply.

(2) *Lands acquired and cleared subsequent to location of highway.* Where lands are acquired and cleared by the local public agency subsequent to its receipt of written advice from a State highway department giving the location of the proposed highway or a request for reservation or conveyance for highway purposes, relocation shall be handled under the provisions of this memoran-

dum. Federal participation would be at the applicable pro rata amount of the cost of the local public agency. Since the FHWA cannot authorize right-of-way acquisition until after the design hearing, with the exception of those instances provided for in Part 790 of Title 23, Code of Federal Regulations, there should be no overall agreement with the local public agency until after the design hearing. A limited agreement could be entered into with the local public agency to allow it to acquire parcels permitted under the provisions of part 790 and handle relocation under the provisions of this part.

§ 740.10 Public information.

(a) *General requirements.* In order to assure that the public has adequate knowledge of the relocation program the State shall present information and provide opportunity for discussion of relocation services and payments at public hearings, prepare a relocation brochure and give full and adequate public notice of the relocation assistance program.

(b) *Corridor public hearings.* The discussion shall include but not necessarily be limited to the following:

(1) The availability of relocation assistance and services, eligibility requirements, and payment procedures.

(2) The estimated number of individuals, families, businesses, farm, and nonprofit organizations that are to be relocated by each of the alternatives under consideration at the hearings.

(3) The studies that have been or will be made and the methods that will be followed to assure that housing needs of the relocatees will be met.

(c) *Highway design public hearings.* The discussion shall include but not necessarily be limited to the following:

(1) The eligibility requirements and payment procedures including:

(i) Eligibility requirements and payment limits for moving costs.

(ii) Replacement housing payment eligibility requirements and payment limits.

(iii) Mortgage interest rate differential eligibility requirements and payment.

(iv) Payment of closing costs incident to the purchase of a replacement dwelling.

(v) Appeal procedures.

(2) Discussion of the services available under the State's relocation assistance advisory program. The address and

telephone number of the local relocation office and the name of the relocation officer in charge.

(3) The estimated number of individuals or families to be relocated.

(4) The estimated number of dwelling units presently available that meet replacement housing requirements.

(5) An estimate of the time necessary for relocation and of the number of dwelling units meeting the replacement housing requirements that will become available during that period.

(6) The depth of presentation would be influenced by the comprehensiveness of the brochure. If the brochure covers a particular item in sufficient detail, it would be satisfactory to highlight what the brochure contains without going into any great detail. If a particular item is not applicable to the project it would not be necessary to discuss the item beyond the mere mention that the law makes provision for such item.

(d) *Brochure.* The State shall prepare a brochure adequately describing its relocation program and distribute the same without cost at all public hearings and to all other individuals and organizations as appropriate. The brochure shall state where copies of any State regulations implementing the relocation assistance program can be obtained. In order to give proper information and assistance to relocatees every effort should be made to communicate with them in their language. Where a language other than English is predominant it might be well to also publish the brochure in such language.

(e) *Public announcements.* In addition to the public hearing notices required by Part 790 the State shall within 15 days after initiation of negotiations on the project provide public announcements of the relocation services to be provided, payments that can be made and where the State's brochure can be obtained. Such public announcements shall consist of the utilization of any combination of mass media which will provide full and adequate notice to the public. The mass media used could be: local newspaper(s), radio, television, local meetings, and posted notices. Federal funds may participate in such expenditures but the costs should be reasonable. Particular emphasis should be given to utilizing the media that is read, looked at, or listened to the most by residents on the project. The public announcements shall:

(1) State the date of initiation of negotiations established for the project. For this purpose, the date of initiation of negotiations for the project means the date the acquiring agency makes the first personal contact with the owner of any property on the Federal or Federal-aid project or his designated representative where price is discussed except where such contact is made solely for protective buying or because of hardship. The control date thus established shall be documented in the project file of the acquiring agency.

(2) Define the area of the project.

(3) Advise occupants of such area of their eligibility for and the requirements to receive moving and replacement housing payments.

(4) Advise that any occupant contemplating moving should, to insure eligibility for moving and replacement housing payments, notify the State before moving.

(5) Advise that owner-occupants in order to be eligible for relocation benefits must sell to the State.

(6) State where the State's brochure describing the relocation program can be obtained.

(f) *Department of Transportation order on replacement housing.* The replacement housing policy contained in the DOT Order 5620.1, dated June 24, 1970 shall be:

(1) Discussed at highway design public hearings under paragraph (c) of this section.

(2) Described in the State's brochure required by paragraph (d) of this section.

(3) Included in public announcements required by paragraph (e) of this section.

§ 740.11 Relocation program plan at conceptual stage.

(a) *General requirements.* A project will be considered to be in this stage until such time as the final location is approved. The cost incurred in connection with securing the information described in paragraph (b) of this section is chargeable to either preliminary engineering or right-of-way. Prior to the completion of this stage and prior to the corridor public hearing, the State shall make preliminary investigations which will furnish the necessary information to meet the corridor public hearing requirements as provided in § 740.10(b).

(b) *Information to be obtained.* The information to be developed at this time would be in the form of an estimate to determine:

(1) The estimated number of individuals, families, businesses, farms, and nonprofit organizations that are to be relocated by each of the alternatives under consideration.

(2) The probable availability of decent, safe, and sanitary replacement housing within the financial means of the individuals and families affected by each of the alternatives under consideration.

(c) *Basis of information obtained.* The basis upon which the above findings were made and a statement relative to the relocation problems involved in each location along with possible solutions shall be submitted by the State to the FHWA prior to the corridor public hearing.

§ 740.12 Relocation program at right-of-way stage.

(a) *General requirements.* The division engineer shall not authorize the State to proceed with negotiations on any project which will cause the relocation of any person until the State has submitted and he has approved the project assurances as provided for in § 740.-6(b) and the relocation plan required by paragraph (b) of this section.

(b) *Relocation plan.*—(1) *Inventory of individual needs.* The State shall prepare an inventory of the characteristics and needs of individuals and families to be displaced based on the standard of comparable replacement housing. This inventory may be based upon a sampling survey process rather than a complete occupancy survey. A State may utilize recent census or other valid recent survey data to assist in preparing the inventory. However, any sampling survey process must be to the depth necessary to be fully representative of the characteristics and needs of the relocatees.

(2) *Inventory of available housing.* The State shall develop a reliable estimate of currently available comparable replacement housing. The estimate shall set forth the type of buildings, state of repair, number of rooms, adequacy of such housing as related to the needs of the persons or families to be relocated (based on standards outlined in § 740.4), type of neighborhood, proximity of public transportation and commercial shopping areas, and distance to any pertinent social institutions, such as church, community facilities, etc. The use of maps,

plats, charts, etc., would be useful at this stage. This estimate should be developed to the extent necessary to assure that the relocation plan can be expeditiously and fully implemented.

(3) *Analysis of inventories.* The State shall prepare an analysis and correlation of the above information so as to develop a relocation plan which will:

(i) Outline the various relocation problems.

(ii) Provide an analysis of current and future Federal, State, and community programs currently in operation in the project areas, and nearby areas affecting the supply and demand for housing including detailed information on concurrent displacement and relocation by other governmental agencies or private concerns.

(iii) Provide an analysis of the problems involved and the method of operation to resolve such problems and relocate the relocatees in order to provide maximum assistance.

(iv) Estimate the amount of leadtime required and demonstrate its adequacy to carry out a timely, orderly, and humane relocation program.

§ 740.13 Relocation program at construction stage.

(a) *Authorization for construction.*

(1) To comply with the DOT Order 5620.1, dated June 24, 1970, the division engineer shall verify the fact that adequate replacement housing is in place and has been made available to relocatees prior to authorizing advertising for physical construction bids.

(2) The division engineer shall not authorize advertising for physical construction bids unless all of the applicable provisions of this part have been complied with.

(b) *Adequate replacement housing.* For the purposes of DOT Order 5620.1, the term "adequate replacement housing" means a dwelling which is:

(1) Decent, safe, and sanitary.

(2) Fair housing—open to all persons regardless of race, color, religion, sex, or national origin and consistent with the requirements of 42 U.S.C. 3601-3619 and 3631.

(3) In areas not generally less desirable than the dwelling to be acquired in regard to:

(a) Public utilities.

(b) Public and commercial facilities.

(4) Within the financial means of the displaced family or individual.

(5) Reasonably accessible to the relocatee's place of employment, public services, and commercial facilities.

(6) Adequate to accommodate the relocatee.

(c) *Available replacement housing.* "Made Available" shall mean that the affected person has either by himself obtained and has the right of possession of replacement housing or the State has offered him decent, safe, and sanitary replacement housing which is available for immediate occupancy. A State will be in compliance with the offer requirement when it can be shown that it has:

(1) Determined that decent, safe, and sanitary housing that is in an area not less desirable in regard to public utilities and public and commercial facilities, in the same general area from which he is being displaced and reasonably accessible to the relocatee's place of employment and adequate to accommodate the relocatee, is available and has informed the relocatee of its availability and location.

(2) Informed the relocatee of the amount, if any, of supplemental payments available to him. In hardship cases, assured the relocatee that an advance of funds will be made should it become necessary.

(3) Provided the relocatee sufficient time to negotiate for and obtain possession of the housing.

(4) Determined that the available housing is within the financial means of the relocatee.

(5) Determined that the replacement housing offer is fair housing—open to all persons regardless of race, color, religion, sex, or national origin.

(d) *Verification of adequate replacement housing.* The verification that adequate replacement housing is in place and has been made available to displacees will be accomplished by spot check field reviews by the division engineer to the depth necessary to provide sufficient evidence that there has been full compliance with DOT Order 5620.1.

§ 740.14 Records.

(a) *Relocation records—General.* The State agency shall maintain relocation records showing:

(1) State and Federal project and parcel identification.

(2) Names and addresses of displaced persons and their complete original and new addresses and telephone numbers (if available after reasonable effort to

obtain where relocatee moved without assistance).

(3) Personal contacts made with each relocated person, including for each relocated person:

(i) Date of notification of availability of relocation payments and services.

(ii) Name of the official offering or providing relocation assistance.

(iii) Whether the offer of assistance in locating or obtaining replacement housing was declined or accepted and the name of the individual accepting or declining the offer.

(iv) Dates and substance of subsequent followup contracts.

(v) Date on which the relocated person was required to move from the property acquired for the project.

(vi) Date on which actual relocation occurred and whether relocation was accomplished with the assistance of the State agency, referral to other agencies, or without assistance. If the latter, an approximate date for actual relocation is acceptable.

(vii) Type of tenure before and after relocation.

(4) For displacements from dwelling:

(i) Number in family.

(ii) Type of property (single detached, multifamily, etc.).

(iii) Value, or monthly rent.

(iv) Number of rooms occupied.

(5) For relocated businesses:

(i) Type of business.

(ii) Whether continued or terminated.

(iii) If relocated, distance moved (estimate acceptable).

(6) For relocated farms:

(i) Whether continued or terminated.

(ii) If relocated, distance moved (estimate acceptable).

(b) *Moving expense records.* The State agency shall maintain records containing the following information regarding moving expense payments:

(1) The date the removal of personal property was accomplished.

(2) The location from which and to which the personal property was moved.

(3) If the personal property was stored temporarily, the location where the property was stored, the duration of such storage, and justification for the storage and storage charges.

(4) Itemized statement of the costs incurred supported by receipted bills or other evidence of expense.

(5) Amount of reimbursement claimed, amount allowed and an explanation of any differences.

(6) Data supporting any determination that a business cannot be relocated without a substantial loss of its existing patronage and that it is not part of a commercial enterprise having at least one other establishment not being acquired by the State or the United States.

(7) When an in lieu payment is made to a business or farm operation, data showing how the payment was computed.

(8) When moving expense payments are made in accordance with a schedule, the data called for in paragraphs (b) (3) and (b) (4) of this section need not be maintained. Instead records showing the basis on which payment was made shall be maintained.

(c) *Replacement housing payment records.* The State agency shall maintain records containing the following information regarding replacement housing payments:

(1) The date of the State agency's receipt of each application for such payments.

(2) The date on which each payment was made or the application rejected.

(3) Supporting data explaining how the amount of the supplemental payment to which the applicant is entitled was calculated.

(4) A copy of the closing statement to support the purchase or downpayment, and incidental expenses when replacement housing is purchased.

(5) A copy of the truth in lending statement or other data including computations to support the increased interest payment.

(6) The individual responsible for determining the amount of the replacement housing payment shall place in the file a signed and dated statement setting forth.

(i) The amount of the replacement housing payments.

(ii) His understanding that the determined amount is to be used in connection with a Federal-aid highway project.

(iii) That he has no direct or indirect present or contemplated personal interest in this transaction nor will derive any benefit from the replacement housing payment.

(7) A statement by the State agency that in its opinion the relocated person has been relocated into adequate replacement housing.

(d) *Records available for inspection.* The relocation records must be available at reasonable hours for inspection by representatives of the Federal Govern-

ment who have an interest or responsibility in matters relative thereto.

§ 740.15 Reports.

(a) *Annual report.* Form PR-1228, Relocation Assistance and Payment Statistics (RCS HRW-20-03), will be submitted annually for the period ending June 30, showing the information requested thereon. Form PR-1228 and instructions for its preparation are available from FHWA in accordance with 49 C.F.R. Part 7. The reports shall be furnished within 30 days after the end of the fiscal year which the report covers: A separate report should be submitted for the rural and urban portion of each system. The reports shall be forwarded to the Office of Right-of-Way, Relocation Assistance Division, through the division and regional offices.

(b) *Reporting to management.* The States are encouraged to establish a reporting procedure which will keep management advised as to the status of relocation of relocatees and its effect on scheduling of construction projects. For example:

(1) The total number of persons to be relocated on the project initially (reported by individuals, families, businesses and nonprofit organizations).

(2) The total number of persons displaced, relocated this reporting period (reported by individuals, families, businesses and nonprofit organizations).

(3) The total number of persons displaced, relocated to date (reported by individuals, families, businesses, and nonprofit organizations).

(4) The analysis of problem cases encountered or anticipated.

(5) The method proposed for resolving problem cases.

(6) A progress analysis of relocating the remaining occupants as compared to the remaining leadtime.

§ 740.16 Relocation program on projects affected by a major disaster.

(a) *General.* The policies and procedures contained in this part, as modified by this paragraph, are applicable to relocation programs on projects in areas that are designated by the President as major disaster areas.

(b) *Tenture of occupancy.* (1) Individuals and families whose homes have been damaged or destroyed by a major disaster and who have not been able to reoccupy their homes by the start of negotiations for the parcel may be con-

sidered to be in constructive occupancy and Federal funds may participate in relocation payments to such individuals and families: provided that location approval for the project had been given by the FHWA prior to the major disaster.

(2) If location approval was not given by the FHWA prior to the major disaster, Federal funds may not participate in relocation payment to such individuals and families.

(c) *Computation of replacement housing payment for owner-occupant of 180 days or more who purchases*—(1) *Fair market value of acquired residence.* The fair market value of damaged or destroyed residences will be as of the usual date of valuation for a highway project.

(2) *Computation.* The replacement housing payment will be the amount, if any, which when added to the amount for which the State acquired the damaged or destroyed dwelling equals the lesser of:

(i) The actual cost the owner is required to pay for a decent, safe and sanitary dwelling; or

(ii) The amount determined by the State as necessary to purchase a comparable dwelling.

(3) *Payment in excess of \$15,000.* If the replacement housing payment to which the displacee would be entitled will exceed \$15,000, the utilization of last resort housing will be necessary.

(4) *Duplicate payments.* Any proceeds received by the relocatee for payment of damages to his residence as a result of the major disaster, from any source, such as flood insurance or cancellation of a portion of a Small Business Administration (SBA) loan is to be deducted from the replacement housing payment for which the relocatee is eligible.

(d) *Requirement to receive replacement housing payment.* A displaced person will be eligible to receive a replacement housing payment providing he occupies a decent, safe and sanitary dwelling as provided in § 740.72(b); except that:

(1) If the relocatee enters into a contract to purchase or construct a replacement dwelling; or

(2) The State under last resort housing procedures enters into a contract to purchase or construct replacement housing for the relocatee, the date of the contract will be considered the occupancy date.

(e) *Relocation services*—(1) *Tenants.* Within 7 days after the initiation of ne-

gotiations for the purchase of the dwelling unit they occupy or are considered to be in constructive occupancy of, as above, tenants shall be provided either by personal contact or certified mail mailed within the said 7 days, a written statement which includes:

(i) The date of initiation of negotiations for the parcel.

(ii) An explanation of the eligibility requirements to receive a rental replacement housing payment, and of his option to receive a downpayment and incidental expenses for the purchase of replacement housing including the matching requirements. In addition, the relocatee shall be provided an explanation of the relocation services available, unless such explanations are adequately covered in the brochure. Emphasis should be placed on the fact that eligibility is not complete until the property is acquired. Each relocatee shall be provided a subsequent notice when he is fully eligible and such notice shall be given prior to the 90-day notice to vacate.

(iii) The brochure.

(iv) If the initial information is given by certified mail as allowed above, there shall be a personal contact with the tenant within 30 days of the initiation of negotiations for the parcel to furnish any additional explanations necessary. Such contact shall be made prior to the 90-day notice to vacate.

(f) *Replacement housing payment to tenant-occupant for not less than 90 days*—(1) *Time of computation.* The maximum replacement housing payment for which a displaced tenant is eligible will be computed near the time he will be actively looking for replacement housing.

(2) *Notification as to payment.* (i) The tenant will be informed in writing of the amount of the maximum replacement housing payment for which he is eligible and of the applicable requirements to receive such payment.

(ii) The information in paragraph (f) (2) (i) of this section is to be given to the tenant at such time as will allow him ample time to find replacement housing but, in any event, must be given prior to the issuance of a 90-day notice to vacate.

(c) If the information in paragraph (f) (2) (i) of this section is requested by the tenant prior to it being provided him the information shall be provided within a reasonable time after such request.

Subpart B—Relocation Services**§ 740.31 Scope.**

This subpart prescribes requirements for providing relocation services to those relocated as a result of Federal and Federal-aid highway programs.

§ 740.32 Relocation assistance advisory services.

(a) *General.* States shall establish a relocation assistance advisory services program in order to provide the maximum assistance possible to persons required to relocate because of a Federal or Federal-aid highway program. The services required herein are intended as a minimum to assist persons in relocating to decent, safe, and sanitary housing that meets their needs. The services shall be provided by personal contact. If such personal contact cannot be made, the State shall document the file to show that reasonable efforts were made to achieve the personal contact.

(b) *Eligibility.* Relocation assistance advisory service shall be offered to:

(1) All persons occupying property to be acquired.

(2) All persons occupying property immediately adjacent to the real property acquired when the State determines that such person or persons are caused substantial economic injury because of the acquisition.

(3) All persons who, because of the acquisition of real property used for a business or farm operation moves from other real property used for a dwelling, or moves his personal property from such other real property.

(c) *Minimum advisory service requirements.* (1) The State relocation assistance advisory service program as required herein shall include as a minimum such measures, facilities or services as may be necessary or appropriate to:

(i) Discuss and explain the services available, relocation payments and the eligibility requirements therefor and assist in completing any applications or other forms required.

(ii) Determine the need, if any, of displaced persons, for relocation assistance.

(iii) Provide current and continuing information on the availability, prices and rentals of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses.

(iv) Assist a person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location.

(v) Supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons.

(vi) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to a new location.

(2) The amount of the advisory services and extent shall be administered on a reasonable basis commensurate with the relocatees' needs.

(d) *Coordination of relocation activities.* The State shall contact other Federal, State, and local governmental agencies to determine the extent of present and proposed actions which will affect its relocation program and the availability of housing resources. Where other agencies are involved positive action shall be taken to assure maximum coordination of relocation activities. To assure simplification and coordination in administering relocation activities, the State should consider contracting with a single agency to assure full responsibility for providing relocation services and assistance in a given community or area.

§ 740.33 Written notices.

The following written notices must be furnished each displaced person to insure that he is fully informed of the benefits and services available to him:

(a) *Notice of intent to acquire.* (1) This notice shall be furnished to owners and tenants, along with the brochure as described in § 740.10(d) when the State determines to establish eligibility for relocation benefits prior to the initiation of negotiations for acquisition of the parcel. This notice shall not be issued prior to the division engineer authorizing the institution of negotiations on the project or authorizing acquisition of individual parcels solely for protective buying or because of hardship.

(2) The notice shall contain the statement of eligibility and any restrictions thereto, the anticipated date of the initiation of negotiations for acquisition of the property and how additional information pertaining to relocation assistance payments and services can be obtained.

(3) If a notice of intent to acquire is furnished an owner, it must also be furnished to his tenants within 15 days.

(4) If a notice of intent to acquire is furnished a tenant, the owner must be simultaneously notified of such action.

(b) *Notice of Displacement.*—(1) *Owner-occupants of more than 180 days.* At the initiation of negotiations for the parcel, the owner shall be furnished:

(i) A written explanation of the eligibility requirements to receive payments for replacement housing, increased interest costs, incidental expenses, and of his option to rent replacement housing unless such explanations are adequately covered in the brochure. In addition, the relocatee shall be provided an explanation of the relocation services available and where they may be obtained.

(ii) The brochure.

(2) *Owner-occupants of less than 180 days but not less than 90 days.* At the initiation of negotiations for the parcel, the owner shall be furnished:

(i) A written explanation of the eligibility requirements to receive payments for replacement housing and of his option to receive a downpayment and incidental expenses to purchase replacement housing and the requirements therefore, and of his option to rent replacement housing unless such explanations are adequately covered in the brochure. In addition, the relocatee shall be provided an explanation of the relocation services available and where they may be obtained.

(ii) The brochure:

(3) *Tenants.* Within 7 days of the initiation of negotiations for the purchase of the dwelling unit occupied, the tenant shall be furnished, either by certified mail or personal contact, a written statement which includes:

(i) The date of initiation of negotiations for the parcel.

(ii) An explanation of the eligibility requirements to receive a rental replacement housing payment, and of their option to receive a downpayment for the purchase or replacement housing including incidental expenses and matching requirements therefor unless such explanations are adequately covered in the brochure. In addition, the relocatees shall be provided an explanation of the relocation services available and where they may be obtained. Emphasis should be placed on the fact that eligibility is

not complete until the property is purchased. Each tenant relocatee shall be provided a subsequent notice when the State has control of the property so that he can be assured of his eligibility to receive relocation payments.

(iii) The brochure.

(iv) If the initial information is given by certified mail as allowed above, there shall be a personal contact with the tenant within 30 days of the initiation of negotiations for the parcel to furnish any additional explanations necessary. Such contact shall be made prior to the 90-day notice to vacate.

(4) *Notice of replacement amounts.*

(i) In order to provide a positive understanding by the displaced person, the amount of the replacement housing payment to which he is entitled and the pertinent eligibility requirements therefor shall be furnished the displaced person in writing.

(ii) The amount shall be computed in accordance with the appropriate instructions and shall be for a replacement dwelling unit comparable to that from which he was displaced. It is the State's responsibility to make available a comparable replacement dwelling unit and relocate the displaced person to his original ownership or tenancy status if this is his desire. If alternate or optional housing or ownership/tenancy status is desired by the displacee, the State will be expected to make a reasonable effort to accede to such desire. If such optional housing is available, the replacement housing amount, if any, will be based on the specified option. The maximum amount of such payment, however, will be limited to that amount based on a replacement comparable dwelling.

(ii) The computation for and the amount of the replacement housing payment shall be made and the displacee so informed at a time which will accomplish the following purposes:

(A) That the housing units used to determine the replacement housing amount are to be selected near the time the displaced person will be actively looking for a replacement dwelling.

(B) That the amount be computed in a timely manner and given the displacee within a reasonable period of time of the displacee's request, if any.

(C) In any event, the displacee will be informed of the maximum amount to

which he is entitled at least 90 days prior to the time he is required to vacate.

(c) *Ninety-day notice to vacate.* (1) The construction or development of a Federal or Federal-aid highway shall be so scheduled that to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, or to move his business or farm without at least 90 days written notice of the intended vacation date from the agency having responsibility for such acquisition. Exceptions to this provision should be made only in the case of very unusual conditions.

(i) The 90-day notice shall not be given until such time as the State has control of the property.

(ii) The 90-day notice shall give a firm specific date by which the relocatee must vacate the property. This date may be extended when conditions warrant, but any extension must be in writing and must give another specific date by which the property must be vacated.

(iii) A notice is not required if an occupant moves on his own volition prior to the time the State gives the 90-day notice.

(2) As an alternate to paragraph (c) (1) of this section a State may adopt the following procedure:

(i) The 90-day notice may be given on or after the initiation of negotiations for the parcel and shall include a statement that the relocatee will not be required to move from a dwelling, or to move his business or farm before 90 days from the date of the notice. Such notice shall inform the relocatee that he will be given a 30-day written notice specifying the date by which the property must be vacated.

(ii) The 30-day notice shall not be given until such time as the State has control of the property.

(iii) Notices are not required if an occupant moves on his own volition prior to the time such notices are given.

(d) *Notice of right to appeal.* All eligible relocatees shall be furnished a written notice of their right to appeal, as provided in § 740.34 and the procedures for making such appeal. Such notification may be provided by the brochure if such procedures are adequately covered therein.

§ 740.34 Appeals.

(a) *State to establish procedures.* The head of the State agency shall establish procedures, consistent with applicable

State law, for his review of appeals under this memorandum. The procedures should provide for possible resolution of an appeal at an echelon below the head of the State agency with a final appeal to the head of the State agency. As a minimum such procedures shall provide that:

(1) Any person making an appeal shall be given a full opportunity to be heard.

(2) A decision will be reached promptly on the basis of evidence submitted and the relocatee notified of such decision.

(3) The result reached will be supported by the necessary computations and rationale and documented in the parcel file.

(b) *Notification of appeal rights and procedures.* At such time as a relocatee indicates he is dissatisfied with a determination as to his eligibility for a payment or of an amount of payment offered under this part he shall be promptly furnished the necessary forms and notified of the procedures to be followed in making an appeal.

Subpart C—Moving Payments

§ 740.51 Scope.

This subpart prescribes requirements for payment of moving and related expenses to those relocated as a result of Federal and Federal-aid highway programs.

§ 740.52 Moving and related expense payments—general provisions for all relocated individuals, families, businesses and farms.

(a) *General.* (1) Any individual, family, business, or farm operator is eligible to receive payment for the reasonable expenses of moving his personal property when:

(i) He is in occupancy at the initiation of negotiations for the acquisition of the real property in whole or in part.

(ii) He is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date.

(iii) He moves from the real property or moves his personal property from the real property subsequent to the earliest date established in §§ 740.52(a) (1) (i) and 740.53(a) (1) (ii).

(iv) The real property is subsequently acquired.

(v) If the move occurs after a written order to vacate is issued the occupant is

eligible even though the property is not acquired.

(2) Where the acquisition of real property used for a business or farm operation which is eligible for a payment under paragraph (a)(1) of this section causes a person to vacate a dwelling or other real property not acquired or move his personal property from other real property not acquired, the additional expenses of moving such personalty are eligible for the appropriate moving payments under §§ 740.53, 740.54(b), (c), and (d), 740.55(a), and 740.56.

(3) Federal funds will generally not participate in more than one move of a displaced person; however, where it is shown to be in the public interest the division engineer may give prior approval to more than one move. Federal funds will not participate in the moving expenses of occupants who succeed a displaced person in occupancy at the time of initiation of negotiations or who has been given a written notice of intent to acquire.

(b) *Distance of move.* There is no limitation on the distance a relocatee moves either interstate or intrastate. Federal participation is limited to moving expenses not to exceed a 50-mile move either interstate or intrastate except when the State determines that relocation cannot be accomplished within the 50-mile area. Such exceptions may only be allowed to the nearest adequate and available site.

(c) *Where moved to.* Federal funds may participate in a payment for relocating personal property of a relocatee that is moved onto remaining or other lands owned by the relocatee or his landlord.

(d) *Advertising for bids.* The expenses incurred in advertising for packing, crating, and transportation are reimbursable when the State determines that such advertising is necessary. Such advertising should be limited to complicated or unusual moves where advertising is the only method of securing bids.

(e) *Cost of moving bids.* The expenses incurred by the State of obtaining bids or estimates of moving expenses are reimbursable, not to exceed two bids per move.

(f) *Direct payment to mover.* By written prearrangement between the State, the relocatee, and the mover, the relocatee may present an unpaid moving bill to the State for direct payment.

(g) *Contract with movers.* A State may enter into a contract with independent movers on a schedule basis and furnish a relocatee with a list of movers he may choose from to move his property. In such instances the State would pay the mover.

(h) *Hardship.* In hardship cases arrangements may be made for payment of moving expenses in advance.

(i) *Storage.* When an actual expense basis is used and the State determines that it is necessary for a relocated person to store his personal property for a reasonable time, not to exceed 12 months, the cost of such storage shall be eligible for Federal participation as a part of the moving expenses. Storage of personal property on the property being acquired or on other property owned by the relocatee is not eligible for Federal participation.

(j) *Insurance.* The cost of insurance premiums covering loss and damage of personal property while in storage or transit is eligible for Federal participation. Such insurance coverage shall not exceed the reasonable replacement value of the personal property.

(k) *Losses in moving.* The reasonable replacement value of property lost, stolen or damaged (not caused by the fault or negligence of the displaced person, his agent or employee) in the process of moving is reimbursable, where insurance to cover such loss or damage is not available.

(l) *Removal and reinstallation expenses.* The expenses of removal, reinstallation, and reestablishment of machinery, equipment, appliances, and other items which are not acquired, including reconnection of utilities to such items, which do not constitute an improvement (except when required by law) to the replacement site are eligible for reimbursement. Such costs are not applicable to items classified by the State as real property and retained by the owner through the owner retention process. Prior to payment of any expenses for removal and reinstallation of such property, the owner and the State shall agree in writing that the property is personalty and that the State is released from any payment for the property as realty.

(m) *Owner retention.* When an owner retains his dwelling, the cost of moving it onto remainder or replacement land is not eligible for reimbursement as a

part of the cost of moving personal property. However, if he chooses to use his dwelling as a means of moving personal property the cost of moving personal property may be considered eligible for Federal participation. Payment in these cases would be on a fixed-schedule basis.

(n) *Delivery of payment checks.* The person or persons who establish the moving cost payment shall not deliver the payment to the relocatee. This also is applicable to situations where such payments and services are being administered by another Federal, State, or local agency under authority of a contract or agreement.

(o) *Claims.* In order to obtain a moving expense payment, a relocated person must file a written claim with the State agency on a form provided by the agency for that purpose within a reasonable time limit determined by the State. The moving expense payment should be made only after the move has been accomplished except as noted in paragraph (h) of this section.

(p) *Exclusions on moving expenses and losses.* The following expenses are considered ineligible for Federal participation as "actual moving expenses":

(1) Additional expenses incurred because of living in a new location.

(2) Cost of moving structures, improvements or other real property in which the displaced person reserved ownership.

(3) Improvements to the replacement site, except when required by law.

(4) Interest on loans to cover moving expenses.

(5) Loss of goodwill.

(6) Loss of business and/or profits.

(7) Loss of trained employees.

(8) Personal injury.

(9) Cost of preparing the application for moving and related expenses.

(10) Modification of personal property to adapt it to replacement site except when required by law.

(11) Payment for search cost in connection with locating a replacement dwelling.

(q) *Moving of personal property.* Whenever it is necessary to move personal property located within the acquired right-of-way as the result of a highway taking, Federal funds may participate in such cost.

[38 FR 29971, Oct. 31, 1973, as amended at 39 FR 1428, Jan. 9, 1974]

§ 740.53 Moving payments to individuals and families.

(a) *General.* A displaced individual or family eligible under § 740.52(a) (1) is entitled to receive a payment for moving his personal property, himself and his family. The relocatee has the option of payment on the basis of actual, reasonable moving expenses, or a moving expense schedule.

(b) *Actual reasonable moving expenses*—(1) *Commercial moves.* (i) A relocated individual or family may be paid the actual, reasonable cost of a move accomplished by a commercial mover. Such expense will be supported by receipted bills.

(ii) The State may contract with independent movers on a schedule basis and furnish the relocatee with a list of movers he may choose from to move his property. In such instances the State would pay the mover.

(2) *Self-moves.* In the case of a self-move the relocated individual or family may be paid his actual moving costs, supported by receipted bills or other evidence of expenses incurred but such payment may not exceed the estimated cost of moving commercially. The estimated cost may be prepared by a commercial moving company or by a qualified State employee.

(3) *Cost of transportation.* The costs of transportation of individuals and families to the new location are also eligible. Such costs may be on a mileage basis, not to exceed 10 cents per mile, or reasonable actual fees if commercial transport is used and may include special services such as the cost of an ambulance to transport invalid relocatees. The actual reasonable costs of meals and lodging, when the State determines that such costs are required because of unforeseen circumstances or practical necessities of the moving operation, are also eligible.

(c) *Moving expense schedule.* (1) A relocated individual or family is eligible to receive a moving expense allowance, not to exceed \$300, determined according to schedules established by the State and approved by the Federal Highway Administrator plus a dislocation allowance of \$200. The schedules are to be prepared to provide adequacy of reimbursement in every locality and shall be graduated in relation to the number of rooms in dwellings and the square footage area in mobile homes and house

trailers. The schedule shall cover four types of occupants:

(i) *Schedule A.* Occupants of unfurnished dwelling units.

(ii) *Schedule B.* Occupants of furnished dwelling units (including sleeping room tenants).

(iii) *Schedule C.* Occupants of mobile homes who move the mobile home and the personal property.

(iv) *Schedule D.* Occupants of mobile homes who move only the personal property.

(2) The schedules are to be submitted to the Washington Headquarters on a standardized format as shown in appendix A. When revisions are considered, they shall be submitted on the same format for approval at least 60 days prior to the effective date of the revised payments.

(d) *Owner-occupants of multifamily dwellings.* In addition to the payment for the moving of personal property, himself and his family from his dwelling unit in accordance with the provisions of this paragraph, the owner-occupant of a multifamily dwelling is also eligible to receive moving payments under § 740.54 for the other units of the multifamily dwelling.

§ 740.54 Moving payments to businesses.

(a) *General.* (1) The owner of a displaced business eligible under § 740.52 (a) (1) is entitled to receive a payment for actual reasonable moving and related expenses which include:

(i) Actual reasonable expenses in moving his business or other personal property as provided in paragraph (d) of this section.

(ii) Actual direct losses of tangible personal property in moving or discontinuing his business, as provided in paragraph (c) of this section.

(iii) Actual reasonable expenses in searching for a replacement business, as provided in paragraph (d) of this section.

(2) In lieu of the payment for actual expenses and losses as specified in paragraph (a) (1) of this section, a relocated business may be eligible for a fixed payment as provided in paragraph (e) of this section.

(b) *Actual reasonable moving expenses*—(1) *Commercial moves.* The owner of a business may be paid the actual reasonable cost of a move accomplished by a commercial mover. Such expenses will be supported by receipted bills.

(2) *Self-Moves.* (i) The owner of a relocated business shall prepare a certified inventory of the items to be actually moved. When the State can obtain two acceptable bids or estimates from qualified moving firms based on the certified inventory list, the owner of a relocated business may be paid an amount equal to the low bid or estimate without negotiation. When circumstances warrant the State may negotiate a lower amount not to exceed the lower of two acceptable bids or estimates. The business may still claim removal and reinstallation expenses as shown under § 740.52(1).

(ii) If such bids or estimates cannot be obtained or if circumstances (such as large fluctuations in inventory) prevent reasonable bidding in the opinion of the State, the displaced owner may be paid his actual reasonable moving costs supported by receipted bills or other evidence of expenses incurred. The allowable expenses of a self-move under this provision may include.

(a) Amounts paid for truck and/or equipment hired.

(b) If vehicles or equipment owned by a business being moved are used, a reasonable amount to cover gas and oil, and the cost of insurance and depreciation directly allocable to hours and/or days the equipment is used for the move.

(c) Wages paid for the labor of persons who physically participate in the move. Labor costs are to be computed on the basis of actual hours worked at the hourly rate paid, but the hourly rate may not exceed that paid by commercial movers or contractors in the locality for each profession or craft involved.

(d) If a business proposes to use working foremen or group leaders regularly employed by the business to provide supervisory services in connection with the move, the amount of their wages covering time spent in actual supervision of the move may be included as a moving expense.

(iii) A State may adopt a procedure by which a qualified State employee, other than the employee handling the claim, makes a moving expense finding not to exceed \$1,000. The amount of such moving expense finding may be paid the owner of the business upon completion of the move without supporting evidence of actual expenses incurred. The employee making the finding may not be involved in the delivery of the payment.

(iv) Upon completion of a self-move, the owner of the relocated business shall

certify in his claim for payment that the items listed were actually relocated. Those items that the owner elects not to relocate may be claimed under actual direct losses as prescribed in § 740.54(c). If the items listed on the owner's certified inventory deviate to any significant extent from the list of items actually relocated, the amount previously agreed to will be revised accordingly.

(3) *Alternate payments.* (i) The provisions of paragraph (c) of this section contain the criteria under which reimbursement is based for personal property which is not moved to the new site.

(ii) When personal property which is used in connection with the business to be moved is of low value and high bulk and the estimated cost of moving would be disproportionate in relation to the value, the State may negotiate with the owner for an amount not to exceed the difference between the cost of replacement of comparable item(s) on the market and the amount which would probably have been received for the item(s) on liquidation.

(4) *Surveillance.* It is required by law that all moving expenses be actual and reasonable. To assure this, the State will be expected to provide surveillance commensurate with the expected expenditures involved. Emphasis will be directed toward those moves that are of a complicated nature and/or a substantial expenditure.

(c) *Actual direct losses of tangible personal property.* Actual direct losses of tangible personal property are allowed when a person who is displaced from his place of business is entitled to relocate such property in whole or in part but elects not to do so. Payments for actual direct losses may only be made after a bona fide effort has been made by the owner to sell the item(s) involved. When the item(s) is sold the payment will be determined in accordance with paragraph (c)(1) or (c)(2) of this section. If the item(s) cannot be sold the owner will be compensated in accordance with paragraph (c)(3) of this section. The sales prices, if any, and the actual, reasonable costs of advertising and conducting the sale shall be supported by a copy of the bills of sale or similar documents and by copies of any advertisements, offer to sell, auction records, and other data supporting the bona fide nature of the sale.

(i) If the business is to be reestablished and an item of personal property

which is used in connection with the business is not moved but promptly replaced with a comparable item at the new location, the reimbursement shall be the lesser of:

(1) The replacement cost minus the net proceeds of the sale.

(ii) The estimated cost of moving the item.

(2) If the business is being discontinued or the item is not to be replaced in the reestablished business the payment will be the lesser of:

(i) The difference between the depreciated value of the item in place and net proceeds of the sale.

(ii) The estimated cost of moving the item.

(3) If a bona fide sale is not effected under paragraph (c)(1) or (c)(2) of this section, because no offer is received for the property the owner shall be entitled to the reasonable expenses of the sale and the estimated cost of moving the item. The claimant should arrange to have the personality removed from the premises at no cost by a junk dealer, etc. If this fails the State shall remove the item in the most economical manner.

(4) When personal property is abandoned with no effort being made by the owner to dispose of such property by sale or by removal at no cost as specified in the above paragraphs, the owner will not be entitled to moving expenses, or losses, for the items involved.

(d) *Actual reasonable expenses in searching for a replacement business.* (1) The owner of a displaced business may be reimbursed for the actual reasonable expenses in searching for a replacement business, not to exceed \$500. Such expenses may include transportation expenses, meals, lodging away from home and the reasonable value of time actually spent in search, including the fees of real estate agents or real estate brokers. In exceptional cases, and with prior approval of the division engineer, an amount greater than \$500 may be authorized when circumstances so require.

(i) *Receipted bills.* All expenses claimed except value of time actually spent in search must be supported by receipted bills.

(ii) *Time spent in search.* Payment for time actually spent in search shall be based on the applicable hourly wage rate for the person(s) conducting the search but may not exceed \$10 per hour. A certified statement of the time spent

in search and hourly wage rate(s) shall accompany the claim.

(e) *In lieu of actual moving expenses.* In lieu of the payments described in paragraphs (b), (c), and (d) of this section an owner of a discontinued or relocated business is eligible to receive a payment equal to the average annual net earnings of the business except that such payment shall be not less than \$2,500 nor more than \$10,000 providing the following requirements are met:

(1) *State must determine.* For the owner of a business to be entitled to this payment, the State must determine that:

(i) The business cannot be relocated without substantial loss of its existing patronage. Such determination shall be made by the State only after consideration of all pertinent circumstances, including but not limited to the following factors:

(a) The term "loss of existing patronage" is the net annual average dollar volume of business during the 2 taxable years immediately preceding the taxable year in which the business is displaced. Net loss would be determined by comparing this amount to the estimated net income of the business for the 12 month period after relocation. Some of the situations which may create a substantial loss of existing patronage under this criteria are:

(1) The displaced business occupied rented quarters and the only replacement sites are for sale but not within the financial capabilities of the displaced business. The same situation could occur even though the original business quarters were owned.

(2) Substantial additional expense for the move which may not be compensable such as downtime during the move, the need to borrow additional capital, the inability of the business owner to secure additional financing, the need to use other business resources for a new plant, and any other related costs of this nature.

(3) The business may be located in an area of low rentals which permits the owner of a small low-volume business to be competitive with his larger competitors. If the business is required to relocate into a higher rental area, it could incur a substantial loss of customers due to a necessary increase in prices to meet his increased operating costs.

(b) The type of business conducted by the displaced person.

(c) The nature of the clientele of the displaced person.

(d) The relative importance of the present and proposed location to the displaced business and the availability of a suitable replacement location for the displaced person. This is most evident in those instances where the displaced owner is either elderly, ill or handicapped. There are many situations, particularly in older neighborhoods, where the owner lives next door or within the same building as his business. A replacement location may not be suitable for these particular owners if they were required to travel any distance to work.

(ii) The business is not part of a commercial enterprise having at least one other establishment not being acquired by the State or the United States which is engaged in the same or similar business.

(iii) A part-time individual or family occupation in the home which does not contribute materially to the income of the displaced owner is not eligible for this payment.

(2) *Payment determination.* The term "average annual net earnings" means one-half of any net earnings of the business before Federal, State and local income taxes, during the 2 taxable years immediately preceding the taxable year in which the business is relocated. If the 2 taxable years immediately preceding displacement are not representative, the State with prior approval from the division engineer may use a 2-year period beginning with 2 years prior to negotiations for the project that would be more representative. It must be determined that the proposed construction has been the cause of the outflow of residents thereby resulting in a decline in net income for the business prior to utilizing this alternate procedure. "Average annual net earnings" include any compensation paid by the business to the owner, his spouse, or his dependent during the 2-year period. In the case of a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by a husband, his wife and their dependent children shall be treated as one unit.

(3) *In business less than 2 years.* If the business affected can show that it was in business 12 consecutive months during the 2 taxable years prior to the taxable year in which it is required to relocate, had income during such period

and is otherwise eligible, the owner of a business is eligible to receive the in lieu of payment. Where the business was in operation for 12 consecutive months or more but was not in operation during the entire 2 preceding taxable years, the payment shall be computed by dividing the net earnings by the number of months the business was operated and multiplying by 12. A taxable year is defined as any 12-month period used by the business in filing income tax returns.

(4) *Owner must provide information.* For the owner of a business to be entitled to his payment, the business must provide information to support its net earnings. City, county, State, or Federal tax returns for the tax years in question are the best sources of this information and would be accepted as evidence of earnings. Any commonly acceptable method could be accepted such as certified financial statements or an affidavit from the owner stating his net earning providing it grants the State the right to review the records and accounts of the business. The owner's statement alone would not be sufficient if the amount claimed exceeded the minimum payment of \$2500.

(5) *Multi-family structures.* Where multi-family structures reasonably comparable to the structure being acquired are not available, the owner may be entitled to an in lieu of moving payment. If a multi-family structure is available that has lesser units than the subject, the "substantial loss of existing patronage" determination is based not on the loss of living units but upon the estimated net annual average dollar volume difference in the two structures. If the income is not expected to decrease from that derived on the subject property, an in lieu of moving payment may not be made even though there may be a loss in the number of living units. If the only comparables available are single family dwellings, the owner would be eligible for and in lieu of moving payment.

[38 FR 29971, Oct. 31, 1974, as amended at 39 FR 1428, Jan. 9, 1974]

§ 740.55 Moving payments to farm operators.

(a) *General.* The owner of a displaced farm operation eligible under § 740.52 (a) (1) is entitled to receive payments for actual reasonable moving expenses, actual direct losses of tangible personal property and actual reasonable expenses in searching for a replacement farm in

accordance with paragraphs (b), (c), and (d) of § 740.54.

(b) *In lieu of actual moving expenses.* In lieu of the payments described in paragraphs b, c, and d of 740.54, any owner of a displaced farm operation is eligible to receive a payment equal to the average annual net earnings of the farm operation except that such payments shall be not less than \$2,500 nor more than \$10,000 and providing the following requirements are met:

(1) *State must determine.* For the owner of a displaced farm operation to be entitled to this payment, the State must determine that:

(i) The farm operator has discontinued or relocated his entire farm operation at the present location; and

(ii) In the case of a partial taking the property remaining after the acquisition is no longer an economic unit as determined by the State during its appraisal process.

(2) *Payment determination.* Same as § 740.54(e) (2).

(3) *In operation less than 2 years.* Same as § 740.54(e) (3).

(4) *Owner must provide information.* Same as § 740.54(e) (4).

§ 740.56 Moving payments—nonprofit organizations.

(a) *General.* (1) A displaced nonprofit organization is eligible to receive payments for actual reasonable moving expenses, actual direct losses of tangible personal property and actual reasonable expenses in searching for a replacement site in accordance with paragraphs b, c, and d of § 740.54.

(2) In lieu of the payments described in (1) above, the nonprofit organization may be paid \$2500 if:

(a) The nonprofit organization cannot be relocated without a substantial loss of its existing patronage. The term "existing patronage" as used in connection with nonprofit organizations includes the persons, community or clientele serviced or affected by the activities of the nonprofit organization.

(b) The nonprofit organization is not part of a commercial enterprise having at least one other establishment not being acquired which is engaged in the same or similar activity.

[38 FR 29971, Oct. 31, 1973, as amended at 39 FR 1429, Jan. 9, 1974]

§ 740.57 Advertising signs.

(a) *General.* (1) The owner of a displaced advertising sign is eligible to re-

ceive a payment for actual reasonable moving and related expenses which include:

(i) Actual reasonable expenses in moving his advertising sign as provided in paragraph (b) of this section.

(ii) Actual direct losses of tangible personal property as provided in paragraph (c) of this section.

(iii) Actual reasonable expenses in searching for a replacement sign site as provided in paragraph (d) of this section.

(2) An advertising sign that is otherwise eligible for moving payments will not be eligible when it is moved to a site in violation of State, Federal, or local regulations.

(3) The provisions of this paragraph do not apply separately to an advertising sign owned by and located on the business or farm being displaced. Such signs including those eligible under § 740.52(a) (2) are to be considered items of the business or farm and included under the provisions of § 740.54.

(b) *Actual reasonable moving expenses.* The owner of a displaced sign may be reimbursed for his actual, reasonable moving expenses in accordance with the provisions of paragraphs (b) (1) and (b) (2) of § 740.54.

(c) *Actual direct losses of tangible personal property.* The owner of a sign may be reimbursed for actual direct losses when he is entitled to relocate the sign but does not do so. The amount of such loss will be the lesser of:

(1) The depreciated reproduction cost of the sign as determined by the State.

(2) The estimated cost of moving the sign.

(d) *Actual reasonable expenses in searching for a replacement sign site.* The owner of a displaced advertising sign may be reimbursed for his actual reasonable expense in searching for a replacement sign site not to exceed \$100. Such expenses may include transportation expenses, meals, lodging away from home and the reasonable value of time actually spent in search, including the fees of real estate agents or brokers. In exceptional cases, and with prior approval of the division engineer, an amount greater than \$100 but not more than \$500, may be authorized when circumstances so require.

(1) *Receipted bills.* All expenses claimed except value of time actually

spent in search must be supported by receipted bills.

(2) *Time spent in search.* Payment for time actually spent in search shall be based on the applicable hourly wage rate for the person(s) conducting the search but may not exceed \$10 per hour. A certified statement of the time spent in search and hourly wage rate(s) shall accompany the claim.

Subpart D—Replacement Housing Payments

§ 740.71 Scope.

This subpart prescribes requirements for payment of replacement housing payments to those relocated as a result of Federal and Federal-aid highway programs.

§ 740.72 Replacement housing payments—general.

(a) *General provisions.* (1) In addition to other payments authorized by this part, individuals and families displaced from a dwelling, including condominium or cooperative apartments, acquired for a Federal or Federal-aid highway project are eligible for replacement housing payments in accordance with this memorandum.

(2) The displaced individual or family is not required to relocate to the same occupancy (owner or tenant) status but has other options according to his ownership status and tenure of occupancy as described in sections 740.73 through 740.79.

(3) Federal funds will not participate in more than one replacement housing payment for each dwelling unit except in the case of multifamily occupancy of a single family dwelling as shown in paragraph (j) of this section.

(b) *Requirement to receive payments.*

(1) In addition to the tenure of occupancy provisions the displaced person is otherwise eligible for the appropriate payments when he relocates and occupies a decent, safe, and sanitary dwelling within a 1-year period beginning on the later of the following dates:

(i) The date on which the owner received from the State final payment for all costs of the acquired dwelling in negotiated settlements; or in the case of condemnation, the date on which the State deposits the required amount in court for the benefit of the owner.

(ii) The date on which he is required to move by the State's written notice to vacate.

(iii) The date on which he moves, if earlier than the date on which he is required to move.

(2) A displaced person who has entered into a contract for the construction or rehabilitation of a replacement dwelling and, for reasons beyond his reasonable control, cannot occupy the replacement dwelling within the time period shown above shall be considered to have purchased and occupied the dwelling as of the date of such contract. The replacement housing payments under these conditions would be deferred until actual occupancy was accomplished.

(c) *State inspection for decent, safe, and sanitary housing.* Before making payment to the relocatee the State must have inspected the replacement dwelling and determined that it meets the standards for decent, safe, and sanitary housing. The State may utilize the services of any public agency ordinarily engaged in housing inspection to make the inspection. Such determination by the State that a dwelling meets the standards for decent, safe, and sanitary housing is made solely for the purpose of determining the eligibility of relocated individuals and families for payments under this memorandum and is not a representation for any other purpose.

(d) *Statement of eligibility to lending agency.* Where a relocatee otherwise qualifies for the replacement housing payments except that he has not yet purchased or occupied a suitable replacement dwelling, the State, after inspecting the proposed dwelling and finding that it meets the standards set forth in § 740.4, for decent, safe, and sanitary dwellings, shall upon the purchaser's request, state to any interested party, financial institution or lending agency, that the relocatee will be eligible for the payment of a specific sum provided he purchases and occupies the inspected dwelling within the time limits specified in paragraph (b) of this section.

(e) *Application for replacement housing payments.*—(1) *General requirements.* Application for replacement housing payments shall be in writing on a form provided by the State. The application shall be filed no later than 6 months after the expiration of the 1-year period specified in paragraph (b) of this section, except that, in condemnation cases, such period shall be extended to 6 months after final adjudication.

(2) *Decent, safe, and sanitary housing.* In the application, the individual or

family must indicate that, to the best of their knowledge and belief, the replacement dwelling meets the standards for decent, safe, and sanitary housing established in § 740.4, and that they are eligible for the payment requested. Before any such payments are made to the relocatee the State must have made the determination that the dwelling is decent, safe, and sanitary as required by paragraph (c) of this section.

(3) *To whom payments made.* The payments described in this paragraph may be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, directly to the lessor for rent or the seller for use towards the purchase of a decent, safe, and sanitary dwelling. In cases where an applicant otherwise qualifies for replacement housing payments, and upon his specific request in the application, the State may make such payments into escrow prior to the relocatee's moving.

(f) *Advance replacement housing payments in condemnation cases.* No property owner should be deprived of the earliest possible payment of the replacement housing amounts to which he is rightfully due. An advance replacement housing payment can be computed and paid to a property owner if the determination of the State's acquisition price will be delayed pending the outcome of condemnation proceedings. Since the amount of the replacement housing payment cannot be determined due to the pending condemnation proceedings, a provisional replacement housing payment may be calculated by deeming the State's maximum offer for the property as the acquisition price. Payment of such amount may be made upon the owner-occupant's agreement that:

(1) Upon final determination of the condemnation proceedings the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the actual price paid or the amount determined by the State necessary to acquire a comparable, decent, safe, and sanitary dwelling.

(2) If the amount awarded in the condemnation proceeding as the fair market value of the property acquired plus the amount of the provisional replacement housing payment exceeds the price paid for, or the State's determined cost of a comparable dwelling, he will refund to the State, from his judgment, an

amount equal to the amount of the excess. However, in no event, shall he be required to refund more than the amount of the replacement housing payment advanced. If the property owner does not agree to such adjustment, the replacement housing payment shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

(g) *Ownership of replacement dwelling prior to displacement.* Any person who has obtained legal ownership of a replacement dwelling or land upon which his replacement dwelling is constructed, either before or after displacement, and occupies the replacement dwelling after being displaced but within the time limit specified in paragraph (b) (1) of this section, is eligible for replacement housing payment if the replacement dwelling, meets the requirements of § 740.4. The cost of the land and dwelling at the time of purchase by the displaced person will constitute the "actual cost" in the replacement housing payment determination.

(h) *Partial take.* (1) Where a dwelling is located on a tract normal for residential use in the area, the maximum replacement housing payment shall be determined by subtracting the "before value" of the property from the estimated selling price of a comparable dwelling on a lot typical for the area.

(2) Where a dwelling is located on a tract larger than normal for residential use in the area, the maximum replacement housing payment shall be determined by estimating the value of the dwelling at the present location on a homesite typical in size for the area and deducting this amount from the selling price of a comparable dwelling on a site typical for the area.

(i) *Dwelling on land with higher and better use.* Where a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, the maximum replacement housing payment shall be determined by estimating the value of the dwelling at the present location on a homesite typical for the area and zoned for residential use and deducting this amount from the selling price of a comparable dwelling on a typical residential homesite for the area.

(j) *Multiple occupancy of same dwelling unit.* (1) *Families.* If two or more eligible families occupy the same single-

family dwelling unit, each family is eligible for a replacement housing payment if they relocate to separate dwelling units.

(2) *Individuals.* If two or more eligible individuals with no identifiable head of household occupy the same single family dwelling unit they are to be considered as one "family" for replacement housing payment purposes. When all individuals do not relocate to decent, safe, and sanitary housing the State shall determine and pay those individuals who do relocate into decent, safe, and sanitary housing a pro rata share of the appropriate payment that would have been received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

(k) *Joint residential and business use.* (1) Where displaced individuals or families occupy living quarters on the same premises as a displaced business, farm, or nonprofit organization, such individuals or families are separate displaced persons for purposes of determining entitlement to relocation payments.

(2) The procedure for computing replacement housing payment amounts to owners of multi-family dwellings who occupy one unit is as follows:

(i) *Comparability.* The comparable dwelling should be the same as that acquired; i.e., if the acquired property is a triplex, then the comparable should be a triplex. If comparables are not available, then structures of the next lowest density must be used. If there are not any available comparable multi-family structures to be found, then the comparison of the owner's living unit would be to a single family residence. A higher density structure should never be used as a comparable.

(ii) *Payment determination.* The value of the owner's unit is to be used as the base for the replacement housing payment determination—not the entire fair market value of the subject property. The replacement housing payment determination is that difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable available property. If the comparable is a triplex, the replacement housing payment is based on the value of only one of the three units; if a duplex, the payment is based on only one of the two units; if a single family dwelling, the payment is based on the entire value of the dwelling. The other liv-

ing units of a multi-family dwelling cannot be included in the value of a comparable because these are considered as income producing and not part of the owner's personal living area.

(1) *Delivery of payment checks.* The person or persons who establish the estimate of the value of replacement housing payment shall not negotiate for the parcel nor deliver the payment to the relocatee. This also is applicable to situations where such payments and services are being administered by another Federal, State, or local agency under authority of a contract or agreement.

§ 740.73 Replacement housing payments for owner-occupant for 180 days or more who purchases.

(a) *General.* (1) A displaced owner-occupant of dwelling may receive additional payments, the combined total of which may not exceed \$15,000, for the additional cost necessary; to purchase replacement housing; to compensate the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; to reimburse the owner for incidental expenses incident to the purchase of replacement housing when such costs are incurred as specified herein.

(2) The owner-occupant is eligible for such payments when:

(i) He is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or in part.

(ii) He is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date.

(iii) Such occupancy has been for at least 180 consecutive days immediately prior to the date of vacation or initiation of negotiations whichever is earlier.

(iv) The property was acquired from him by the State.

(e) He purchased and occupied a decent, safe, and sanitary dwelling within the time period specified in § 740.72(b).

(3) If otherwise eligible under paragraph (a) (2) of this section the owner-occupant may receive these payments if the State issues an order to vacate even though the property is not acquired.

(b) *Replacement housing payment—*

(1) *Amount of payment.* The replacement housing payment is the amount, if any, when added to the amount for which the State acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe, and sani-

tary dwelling or the amount determined by the State as necessary to purchase a comparable dwelling, whichever is less.

(2) *State determination of amount necessary to purchase—*(i) *Schedule.* The State may establish a schedule of probable selling prices of comparable dwellings in the various types of dwellings being acquired. Such schedule will be prepared from an analysis of the probable selling prices of dwellings available on the market and periodically updated to reflect current probable selling prices. Such schedules shall be coordinated with other governmental agencies causing displacement in the same community or area so as to assure uniformity to the maximum extent possible.

(ii) *Three comparable methods.* The State may determine the probable selling price of a comparable dwelling by analyzing at least three comparable dwellings representative of the dwelling unit to be acquired which are available on the private market and meet the criteria in § 740.3(g). Less than three comparables may be used for this determination when additional comparable dwellings are not available and the State documents the parcel file to this effect. Selection of comparables and computation of the payment must be by a qualified State employee other than the appraiser or review appraiser on the parcel involved. The selected comparables must be the most nearly comparable and equal to or better than the subject property.

(A) *Adjustment of asking price.* No adjustment will be made to the asking price of the selected comparables. Where a dwelling is obviously overpriced in relation to other comparables, it may not be used in the replacement housing computation.

(iii) *Alternate method.* As an alternate method to paragraph (b) (a) (1) and (ii) of this section the State may develop a different method of determining the probable selling price of comparable dwellings and submit it to the Regional Federal Highway Administrator for his prior approval.

(3) *Revisions to replacement housing amount.* If the relocatee requests assistance in finding replacement housing he must be offered housing which is comparable and available for purchase within the offered amount. When such housing is no longer available, the State will determine a new replacement housing amount based on available housing which

is equal or better and meets the other comparable criteria.

(c) *Increased interest payments*—(1) *General.* (i) Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling.

(ii) The increased interest payment shall be allowed only when both of the following conditions are met:

(A) The dwelling acquired by the State was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the established eligibility date under § 740.73 (a) (2).

(B) The mortgage on the replacement dwelling bears a higher rate of interest than the mortgage interest rate on the acquired dwelling.

(iii) The increased interest payment will be based on and limited to the lesser of the following amounts:

(A) The present worth of the right to receive the monthly difference in mortgage payments on the existing mortgage using the old and new interest rates.

(B) The present worth of the right to receive the monthly difference in mortgage payments on the new mortgage using the old and new interest rates.

(2) *Payment computation.* The amount of increased interest payment will be computed as shown in appendix B and in accordance with the following procedures:

(i) The monthly principal and interest payment difference caused by the change in interest rates is computed for both the existing mortgage and new mortgage for their respective remaining terms and amounts. The old and new interest rates are used in each case.

(ii) The present worth of the monthly interest differences found in paragraph (c) (2) (i) of this section is computed for each mortgage by discounting the annual difference (the sum of the monthly difference for 1 year) at the savings deposit interest rate for the remaining term of each mortgage. The lesser of the amounts so derived is the increased interest payment.

(iii) To the amount so derived above will be added the amount actually paid by the purchaser as points on the amount refinanced but not to exceed an amount which would have been paid if the original mortgage balance was refinanced, and/or a fee actually charged as an orig-

ination or services fee (not to exceed 1 percent of the mortgage amount as shown above) if such fees are normal to real estate transactions in the area.

(3) *Interest rate of replacement dwelling mortgage.* The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual rate but may not exceed the prevailing interest rate currently charged by mortgage lending institutions in the vicinity.

(4) *Discount rate.* The discount rate shall be the prevailing rate of interest paid on passbook savings account deposits by commercial banks in the general area in which the replacement dwelling is located.

(5) *To whom payment made.* The payment described in this paragraph may be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, directly to the mortgagee of the replacement dwelling. In cases where an applicant otherwise qualifies for an interest payment, and upon his specific request, the State may make an advance payment into escrow prior to the relocatee's moving.

(6) *Partial acquisition.* (1) Where the dwelling is located on a tract normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the acquisition price bears to the before value; except, the reduction shall not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

(ii) Where a dwelling is located on a tract larger than normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(7) *Multiuse properties.* The interest payment on multiuse properties shall be reduced to the percentage ratio that the residential value of the multiuse property bears to the before value.

(8) *Other highest and best use.* If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as provided in the appropriate paragraphs above. If the mortgage is

obviously based on the higher use, however, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.

(d) *Incidental expenses*—(1) *Amount of payment*. The incidental expenses payment is the amount necessary to reimburse the homeowner for the actual costs incurred by him incident to the purchase of the replacement dwelling, but not for prepaid expenses. Such costs may include the following item if normally paid by the buyer:

(i) Legal, closing, and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings, or plats and charges paid incident to recordation.

(ii) Lenders, FHA or VA appraisal fee.

(iii) FHA or VA application fee.

(iv) Certification of structural soundness when required by lender, FHA or VA.

(v) Credit report.

(vi) Owner's title policy or abstract of title.

(vii) Escrow agent's fee.

(viii) State revenue stamps.

(ix) Sales or transfer taxes.

(x) No fee, cost, charge or expense is reimbursable as incidental expenses which is determined to be a part of the debt service, or finance, charge under 15 U.S.C. 1631-1641 and regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System.

(e) *Combined payments not to exceed \$15,000*. If an owner-occupant is otherwise qualified for a payment but has previously received a payment under § 740.74, the amount of such payment received under § 740.74 shall be deducted from the amount to which he is entitled under this section. In no event may the combined payments exceed \$15,000.

(f) *Owner retention*. The owner shall be allowed the option of retaining his dwelling in accordance with FHWA right-of-way procedures. The replacement housing payment in cases of owner retention shall be computed in accordance with paragraph (f) (1), (2), and (3) of this section.

(1) *Dwelling is decent, safe, and sanitary*. The payment, if any, shall be the amount by which the costs to relocate the retained dwelling exceeds the acquisition price of the dwelling. The costs to relocate may include the reason-

able costs of acquiring a new site and other expenses incident to retaining, moving the dwelling and restoring it to a condition comparable to that before the move.

(2) *Dwelling is not decent, safe, and sanitary*. The payment shall be computed as shown above except that the costs to cure the decent, safe and sanitary deficiencies shall be included in the costs to relocate.

(3) *Limitations*. The payment so computed under paragraph (f) (1) or (2) of this section may not exceed the amount which the owner would have obtained under paragraph (b) (1) of this section or, if no comparables are available on which to make such a determination, the cost of a new dwelling adequate to accommodate the relocatee.

§ 740.74 Rental replacement housing payments to owner-occupant for 180 days or more who rents.

(a) *General*. An owner-occupant eligible for a replacement housing payment under § 740.73(a) who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed \$4,000.

(b) *Computation and disbursement of payment*. The payment shall be computed and disbursed in accordance with the provisions of § 740.77 (b), (c), and (d) except that the present rental rate shall be economic rent as determined by market data.

§ 740.75 Replacement housing payments to owner-occupant for less than 180 days but not less than 90 days who purchases.

(a) *General*. A displaced owner-occupant otherwise eligible under § 740.73(a) except that he has owned and occupied the dwelling for less than 180 days but not less than 90 days may receive an amount, not to exceed \$4,000, to enable him to make a downpayment on the purchase of a replacement dwelling and reimbursement for actual expenses incident to such purchase; or for additional costs to relocate his retained dwelling in accordance with the following.

(b) *Computation of downpayment and incidental costs*. (1) The amount of the downpayment shall be determined by the State as the amount required as a typical downpayment on a comparable dwelling if such purchase was financed with a conventional loan plus the amount required to be paid by the pur-

chaser as points and/or an origination or loan services fee (not to exceed 1 percent), if such fees are normal to real estate transactions in the area.

(2) The expenses incident to the purchase of replacement housing are described in § 740.73(d).

(3) Upon purchase and occupancy of a decent, safe and sanitary dwelling by the relocatee within the time limits specified by § 740.72(b) the relocatee may be reimbursed:

(i) The full amount of the downpayment determined in paragraph (b) (1) of this section and the eligible incidental expenses if such total amount does not exceed \$2,000; or if more than \$2,000.

(ii) \$2,000, plus 50 percent of the amount in excess of \$2,000 providing the relocatee contributes 50 percent of the amount in excess of \$2,000. Federal funds may participate in these payments but not to exceed \$4,000.

(4) The full amount of the downpayment must be applied to the purchase price and such downpayment and incidental costs claimed must be shown in the closing statement.

(c) *Owner retention of dwelling.* The owner may retain his dwelling and the replacement housing payment, if any, will be determined in accordance with the provisions of § 740.73(f) (1) and (2) but in no event will such payment exceed \$4,000.

(d) *Combined payments not to exceed \$4,000.* If an owner-occupant is otherwise qualified under this paragraph but has previously received a payment under § 740.76, the amount of such payment made under § 740.76 shall be deducted from the amount to which he is entitled under this section. In no event may the combined payments exceed \$4,000.

§ 740.76 Rental replacement housing payments to owner-occupant for less than 180 days but not less than 90 days who rents.

(a) *General.* A displaced owner-occupant otherwise eligible under § 740.73(a) except that he has owned and occupied the dwelling for less than 180 days but not less than 90 days and elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed \$4,000.

(b) *Computation and Disbursement of Payment.* The payment will be computed and disbursed in accordance with the provisions of paragraphs § 740.7 (b), (c),

and (d) except that the present rental rate shall be economic rent as determined by market data.

§ 740.77 Rental replacement housing payments to tenant-occupant for not less than 90 days who rents.

(a) *General.* A displaced tenant is eligible for a rental replacement housing payment, not to exceed \$4,000, when:

(1) He is in occupancy at the beginning of negotiations for the acquisition of the real property, in whole or in part.

(2) He is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date.

(3) Such occupancy has been for at least 90 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier.

(4) The property was subsequently acquired.

(5) He rented and occupied a decent, safe, and sanitary dwelling within the time period specified in § 740.72(b).

(6) If otherwise eligible, the tenant may receive this payment if the State issues an order to vacate even though the property is not acquired.

(b) *Computation of payment.* (1) Except as provided in paragraph (b) (2) of this section, the payment, not to exceed \$4,000, shall be determined by subtracting from the amount which the tenant actually pays for a replacement dwelling or, if lesser, the amount determined by the State as necessary to rent a comparable dwelling for the next 4 years the following amount:

(i) Forty-eight times the average monthly rental paid by the relocated individual or family during the last 3 months or such other appropriate time as may be proper; or

(ii) If such average monthly rental is not reasonably equal to market rentals for similar dwellings, the economic rent as established by the State shall be used.

(iii) The "monthly rental paid" shall include any rent supplements supplied by others except when, by law, such supplement is to be discontinued upon vacation of the property.

(2) When the average monthly rental being paid by the relocatee, not including supplemental rent by public agencies, exceeds 25 percent of the monthly gross income of such individual or family, the payment, not to exceed \$4,000, shall be determined by subtracting 12 times the

average monthly income of the relocatee from:

(i) Forty-eight times the monthly rental the tenant actually pays for his replacement unit or, if lesser, the amount determined by the State as necessary to rent a comparable dwelling if he relocates into private housing; or

(ii) Forty-eight times the monthly rental the relocatee is required to pay if he relocates in a comparable unit of public subsidized rental housing.

(iii) When a rental replacement housing payment computed under this criteria exceeds \$4,000, the selected replacement dwellings may not be classed as comparable. Housing must be made available which is within the financial means of the relocatee.

(c) *State's determination of amount necessary to rent.* The State may determine the rental rates of comparable housing by a schedule, three comparable methods or an approved alternate in accordance with the principles set forth in § 740.73(b)(2) of this memorandum, except with regard to adjustments of asking price.

(d) *Disbursement of rental replacement housing payments.* The amount of the rental payment, determined as shown above, shall be paid in a lump sum, unless the displaced person who is entitled to the payment requests that it be paid in installments.

[38 FR 29971, Oct. 31, 1973, as amended at 39 FR 17222, May 14, 1974]

§ 740.78 Replacement housing payments to tenant-occupant for not less than 90 days who purchases.

(a) *General.* A displaced tenant eligible for a rental replacement housing payment under § 740.77 who elects to purchase a replacement dwelling is eligible to receive an amount, not to exceed \$4,000, to enable him to make a downpayment on the purchase of a replacement dwelling including the expenses incident to such purchase.

(b) *Computation of payment.* The payment shall be computed in accordance with § 740.5(b).

§ 740.79 Replacement housing payments to tenant of a sleeping room for not less than 90 days.

(a) *General.* A displaced tenant of a sleeping room who is eligible for a replacement housing payment under § 740.77(a) may receive an amount, not to exceed \$4,000, as a rental replacement

housing payment or to enable him to make a downpayment on a replacement dwelling in accordance with the following paragraphs.

(b) *Rental replacement housing payment.* (1) The payment, not to exceed \$4,000, shall be determined by subtracting from the amount which the tenant actually pays or, if lesser, the amount determined by the State as necessary to rent a comparable sleeping room for the next 4 years the following amount:

(i) Forty-eight times the average monthly rental paid by the displaced tenant during the last 3 months.

(ii) If such average monthly rental is not reasonably equal to market rentals for similar sleeping rooms, the economic rent as established by the State.

(2) The State's determination of the amount necessary to rent and the disbursement of the rental replacement housing payments shall be as provided in § 740.77 (c) and (d).

(c) *Downpayment.* The downpayment amount including the expenses incident to purchase of the replacement dwelling are to be computed in accordance with the provisions of § 740.75(b).

Subpart E—Mobile Homes

§ 740.91 Scope.

This subpart prescribes requirements for providing moving and related expenses and replacement housing payments to those relocated as a result of Federal and Federal-aid highway programs.

§ 740.92 Mobile homes—general.

(a) *Federal participation—real property.* Federal funds will be eligible for participation in the cost of acquiring a mobile home when they are considered realty under State law.

(b) *Federal participation—personal property acquired.* Federal funds will be eligible for participation in the cost of acquiring a mobile home when it is considered personally under State law under the following conditions:

(1) The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost.

(2) The mobile home is not considered to be a decent, safe, and sanitary dwelling unit. A mobile home is considered to be decent, safe, and sanitary if it meets the standards set forth in § 740.4 except that the space requirements are reduced

to a minimum of 150 square feet of habitable floor space for the first occupant and a minimum of 70 square feet of habitable floor space for each additional occupant and that one means of egress is acceptable.

(c) *Partial acquisition of mobile home park.* Where the State determines that a sufficient portion of a mobile home park is taken to justify the operator of such park to move his business or go out of business the owners and occupants of the mobile home dwellings not within the actual taking but who are forced to move would be eligible to receive the same payments as though their dwellings were within the actual taking.

(d) *Mobile home as replacement dwellings.* (1) A mobile home may be considered a replacement dwelling provided it substantially meets applicable State and Federal requirements for decent, safe, and sanitary dwellings.

(2) Any State which maintains that mobile homes cannot be considered as replacement housing under State law should be requested to submit an opinion from the chief legal advisor of the highway department in support of that position. The opinion should then be forwarded by the division through the region for Washington headquarters review and advice.

(e) *Computation on next highest type.* When a comparable mobile home dwelling is not available it will be necessary to calculate the replacement housing payment on the basis of the next highest type of dwelling that is available and meets the applicable requirements and standards, i.e., a higher type mobile home or a conventional dwelling.

(f) The general provisions for moving expenses and replacement housing payments of §§ 740.52 and 740.72 are also applicable to owners and tenants of mobile homes.

§ 740.93 Moving expenses—mobile homes.

(a) *General.* The eligibility requirements of § 740.52 and the provisions of §§ 740.52 and 740.53 are applicable to owners and occupants displaced from a mobile home.

(b) *Owners of mobile homes.* (1) The owner of a mobile home may be reimbursed for the actual reasonable costs of moving the mobile home and/or other personal property in accordance with the provisions of § 740.53(b).

(2) If the owner occupies the mobile home, and the mobile home is moved, he may elect to be reimbursed in accordance with schedule C, § 740.53(c)(1)(iii).

(3) If the owner occupies the mobile home, and the mobile home is not moved, he may elect to be reimbursed in accordance with schedule D, § 740.53(c)(1)(iv).

(4) The cost of moving a mobile home on an actual cost basis may include the cost of detaching and reattaching fixtures and appliances where applicable.

(c) *Tenants of mobile homes.* Tenants who are displaced from a mobile home may elect to be reimbursed for moving their personal property on an actual reasonable cost basis as specified in § 740.53(b) or in accordance with schedule D, § 740.53(c)(1)(iv).

§ 740.94 Replacement housing payments for owner-occupants of mobile homes for 180 days or more.

(a) *General.* (1) A displaced owner of a mobile home who has occupied, for at least 180 days, the mobile home on the site from which he is being displaced and who is otherwise eligible under § 740.73 (a) (2) or (3), is eligible for payments, the total of which may not exceed \$15,000, for:

(i) The additional costs necessary to purchase replacement housing as specified in paragraphs (b)(1), (c)(1), or (d)(1) of this section and in accordance with the principles of § 740.73(b).

(ii) An amount as determined to compensate him for the loss of favorable financing on his existing mortgage in the financing of such replacement housing under § 740.73(c).

(iii) An amount to reimburse the owner for incidental expenses incident to the purchase of such replacement housing in accordance with § 740.73(d).

(2) A displaced owner-occupant of a mobile home eligible for a replacement housing payment as shown above who elects to rent is eligible for a rental replacement housing payment, not to exceed \$4,000, in accordance with paragraphs (b)(2), (c)(2), or (d)(2) of this section. Such payments will be computed and disbursed in accordance with § 740.77 (b), (c) and (d).

(b) *Acquisition of mobile home and site from owner occupant—*(1) *Replacement housing payment.* The replacement housing payment will be the amount; if any, when added to the amount for which the State acquired his mobile home and site equals the lesser of:

(i) The amount the owner is required to pay for a decent, safe, and sanitary conventional dwelling or a decent, safe, and sanitary replacement mobile home and site.

(ii) The amount determined by the State as necessary to purchase a comparable mobile home and site in accordance with § 740.73 (b).

(2) *Rental replacement housing payment.* (i) If the owner elects to rent, the rental replacement housing payment shall be determined by subtracting from the amount which he actually pays or, if lesser, the amount determined by the State as necessary to rent a comparable mobile home and site for a period of 4 years and 48 times the economic rent of the mobile home and site.

(ii) This rental payment may not exceed the amount determined in paragraph 5b(1) (b).

(c) *Acquisition of site only from owner-occupant of mobile home.* Upon acquisition of the site, but not the home situated upon the site and the mobile home is required to be moved, the replacement housing payment will be determined as follows:

(1) *Replacement housing payment.* The replacement housing payment will be the amount, if any, when added to the amount for which the State acquired his mobile homesite equals the lesser of:

(i) The amount the owner is required to pay for a comparable site.

(ii) The amount determined by the State as necessary to purchase a comparable mobile homesite.

(2) *Rental replacement housing payment.* (i) If the owner elects to rent, the rental replacement housing payment shall be determined by subtracting from the amount which he actually pays or, if lesser, the amount determined by the State as necessary to rent a comparable mobile homesite for a period of 4 years and 48 times the economic rent of the site acquired.

(ii) This rental payment may not exceed the amount determined by the State in paragraph (c) (1) (ii) of this section.

(d) *Acquisition of mobile home only—Owner-occupant rents site.* (1) *Replacement housing payment.* The replacement housing payment will be the amount, if any, when added to the amount for which the State acquired his mobile home equals the lesser of:

(i) The amount the owner is required to pay for a replacement dwelling.

(ii) The amount determined by the State as necessary to purchase a comparable mobile home, plus the difference in the amount determined by the State as necessary to rent a comparable mobile homesite for a period of 4 years and 48 times the rent being paid on the site acquired.

(2) *Rental replacement housing payment.* If the owner elects to rent a replacement mobile home, the rental replacement housing payment shall be the difference in the amount actually paid or, if lesser, the amount determined by the State as necessary to rent a comparable mobile home and site for a period of 4 years and 48 times the economic rent of the mobile home and actual rent of the site acquired.

§ 740.95 Replacement housing payments for owner-occupants of mobile homes for less than 180 days but more than 90 days.

(a) *General.* (1) A displaced owner of a mobile home who has occupied, for less than 180 days but more than 90 days, the mobile home on the site from which he is being displaced and who is otherwise eligible under § 740.73 (a) (2) or (3) is eligible for an amount, not to exceed \$4,000.

(i) To enable him to make a downpayment on the purchase of replacement housing in accordance with the provisions of paragraphs (b) (1), (c) (1) and (d) (1) of this section, and reimburse him for the actual expenses incident to such purchase.

(ii) If he elects to rent, a rental replacement housing payment shall be determined as provided in paragraphs (b) (2), (c) (2), (d) (1) (ii), and (d) (2) of this section. Such payments are to be computed and disbursed in accordance with the principles of § 740.77 (b), (c), and (d).

(b) *Acquisition of mobile home and site from owner-occupant—*(1) *Replacement housing payment.* If the owner purchases a replacement dwelling, the replacement housing payment will be determined in accordance with § 740.75 (b), except that the amount of the downpayment shall be determined by the State as the amount required as a downpayment on the purchase of a comparable mobile home and site.

(2) *Rental replacement housing payment.* If the owner elects to rent, the rental replacement housing payment

shall be the difference in the amount actually paid or, if lesser, the amount determined by the State as necessary to rent a comparable mobile home and site for a period of 4 years and 48 times the economic rent of the mobile home and site.

(c) *Acquisition of site only from owner-occupant of mobile home*—(1) *Replacement housing payment.* If the owner purchases conventional replacement housing or a site to which the mobile home is moved, the replacement housing payment will be an amount determined in accordance with § 740.75 (b), except that the amount of the downpayment shall be determined by the State as the amount required as a downpayment on the purchase of a comparable site.

(2) *Rental replacement housing payment.* If the owner elects to rent, the rental replacement housing payment shall be the difference in the amount actually paid or, if lesser, the amount determined by the State as necessary to rent a comparable site for a period of 4 years and 48 times the economic rent of the site acquired.

(d) *Acquisition of mobile home only—Owner-occupant rents site*—(1) *Replacement housing payment.* If the owner purchases replacement housing the replacement housing payment will be:

(i) An amount determined in accordance with § 740.75(b), except that the amount of the downpayment shall be determined by the State as the amount required as a downpayment on the purchase of a comparable mobile home.

(ii) The difference in the amount the owner actually pays or, if lesser, the amount determined by the State as necessary to rent a comparable mobile homesite for a period of 4 years and 48 times the rent being paid on the site acquired.

(2) *Rental replacement housing payment.* If the owner elects to rent, the rental replacement housing payment shall be determined by subtracting from the amount the owner actually pays or, if lesser, the amount determined by the State as necessary to rent a comparable mobile home and site for a period of 4 years and 48 times the economic rent of the mobile home and actual rent of the site acquired.

§ 740.96 Replacement housing payments to tenants of mobile homes for 90 days or more.

(a) *General.*

(1) A displaced tenant of a mobile home who has occupied for at least 90 days the mobile home on the site from which he has been displaced and who is otherwise eligible under § 740.77 (a), is eligible for a replacement housing payment, not to exceed \$4,000.

(A) To enable him to make a downpayment on the purchase of a decent, safe, and sanitary dwelling and to reimburse him for the expenses incident to such purchase in accordance with § 740.95 (b) (1).

(B) If he elects to rent, the rental replacement housing payment will be determined in accordance with § 740.95 (b) (2), except that actual rent being paid for the mobile home and site will be used in the computation. The payment will be computed and disbursed in accordance with the principles of § 740.77 (b), (c), and (d).

Subpart F—Replacement Housing as Last Resort

§ 740.111 Scope.

(a) *General.* This subpart prescribes requirements for the construction of replacement housing as last resort when it is determined that a Federal or Federal-aid project cannot proceed to actual construction because comparable decent, safe and sanitary replacement sale or rental housing is not available for highway displacees and cannot otherwise be made available.

(b) *Implementation.* It is also the purpose of this subpart to allow broad latitude in methods of implementation by the States, subject to the requirements set forth herein. The State may enter into cooperative agreements with any other Federal, State or local agency or contract with any individual, firm, association or corporation for services in connection with these activities. It is expected that the State will, to the greatest extent practicable, utilize the services of Federal, State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

§ 740.112 General requirements.

(a) *Rights of the displaced person.* The provisions contained herein are not

intended to deprive any displaced person of his rights to receive relocation assistance, moving costs or replacement housing payments for which he may be otherwise eligible nor of his freedom of choice in the selection of replacement housing. The State may not require a displaced person, without his written consent, to accept a dwelling provided by the State under these procedures in lieu of his acquisition payment, if any, for the real property from which he is displaced or the replacement housing payments for which he may be eligible under 42 U.S.C. 4623 or 4624. However, the State's obligation of providing comparable replacement housing will have been discharged when such housing has been made available to the displaced person in compliance with the Uniform Act.

(b) *Consequential displacement.* Any person displaced because of the acquisition of real property for a last resort housing project under the State's power of eminent domain (including amicable agreements under the threat of such power) is entitled to all benefits for which he is eligible under the relocation assistance provisions, except:

(1) This provision is not applicable to an owner-occupant who voluntarily acts to sell his property to the State for last resort housing; and

(2) The owner-occupant so certifies in a statement maintained in the State's files.

(c) *Compliance with other statutes.* The development and implementation of last resort housing projects shall be in compliance with the applicable provisions of the following, including the amendments and regulations issued pursuant thereto:

(1) Section 1 of the Civil Rights Act of 1966 (42 U.S.C. 1982).

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 1972, 1975 and 2000 a-h-6; 23 U.S.C. 1447).

(3) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.).

(4) The National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347).

(5) Executive Order 11063 (Equal Opportunity in Housing) 3 CFR Comp. 1959-1963, page 652.

(6) Executive Order 11246 (Equal Employment Opportunity) 3 CFR Comp. 1964-1965, page 339 or Federal Laws, Regulations and Materials Relating to the Federal Highway Administration, page IV-41.

(7) Executive Order 11625 (Minority Business Enterprise) 3 CFR Comp. 1971, page 213.

§ 740.113 Applicability.

(a) *General.* Federal-aid funds may only be programmed for a last resort housing project when there are or will be other Federal funds involved on that project. If other Federal funds subsequently are not programmed, Federal-aid funds which have been expended will be refunded to the project.

(b) *Utilization of last resort housing.* Replacement housing may be provided when:

(1) Comparable decent, safe and sanitary housing is not available for the displaced person.

(2) Comparable decent, safe and sanitary housing is available for the displaced person within his financial means but the sales price or rental rates exceed the applicable \$15,000 or \$4,000 limitation of 42 U.S.C. 4623 and 4624. However, a displaced person eligible for a downpayment under 42 U.S.C. 4624 must equally match any amount over \$2,000 required for the downpayment and incidental expenses of the purchase. Such displaced person may contribute labor and materials as part or all of his matching funds.

(c) *Replacement housing costs in excess of \$15,000 for an owner of more than 180 days.* The 180-day owner in accordance with 42 U.S.C. 4623, is eligible for increased interest costs, closing costs and a replacement housing payment. When the sum of these items is estimated to exceed the \$15,000 maximum allowed under 42 U.S.C. 4623, the last resort housing provisions are applicable. Any replacement housing payment in excess of the \$15,000 maximum may not be paid to the dislocatee.

(d) *Rent supplement costs in excess of \$4,000 for an owner of more than 90 days but less than 180 days or for a tenant of more than 90 days.* A 90-day owner or a tenant, in accordance with 42 U.S.C. 4624, is eligible for a rent supplement. When this payment is expected to exceed the \$4,000 maximum allowed under 42 U.S.C. 4624, the provisions of 42 U.S.C. 4626 are applicable. Any replacement housing payment in excess of the \$4,000 maximum may not be applied to the dislocatee.

(e) *Nonavailability of comparable housing.* When comparable decent, safe

and sanitary housing is not available and cannot otherwise be made available, the State may provide such housing by methods which include but are not limited to the following:

(1) The purchase of land and/or existing dwellings. The procedure for such acquisitions shall be in compliance with requirements and procedures of the Federal Highway Administration concerning appraisal, appraisal review, and negotiations.

(2) The rehabilitation of existing dwellings to meet decent, safe and sanitary requirements. No existing dwellings may be acquired as replacement housing if the cost of acquisition and/or rehabilitation exceeds the estimated cost of constructing a new comparable dwelling meeting the decent, safe and sanitary requirements of the relocatees that can be constructed on a timely basis.

(3) The relocation and, if necessary, the refurbishing or rehabilitation of dwellings purchased by the State for right-of-way purposes.

(4) The construction of new dwellings.

(5) The transfer from the General Services Administration to the State of any real property surplus to the needs of the United States. Such transfer shall be subject to such terms and conditions as the General Services Administration determines necessary to protect the interest of the United States and may be made without monetary consideration, except that the State shall pay to the United States all amounts received by the State from any sale, lease, or other disposition of such property used for replacement housing purposes.

(f) *Ownership or tenancy status.* It is the responsibility of the State to provide a replacement dwelling which places the displacee in the same ownership or tenancy status as he had prior to displacement. The State is not obligated to provide a dwelling which changes the ownership or tenancy status of the relocatee unless such a dwelling is available or can be provided more economically.

(g) *Owner retention.* The last resort housing procedures are generally not applicable when comparable housing meeting decent, safe and sanitary requirements is obtained by the relocatee through owner retention if the estimated replacement housing payment for which he is eligible is within the \$15,000 or \$4,000, for the 180- or 90-day owner respectively. If the estimated replace-

ment housing payment exceeds these limits, the owner retention method may be utilized providing such method is shown to be more economical than last resort housing.

§ 740.114 Programming and authorization.

(a) All of the following activities shall be programmed and authorized as a last resort housing project:

(1) *Preliminary study.* When the relocation information required for the corridor public hearing, the environmental impact statement, or any information developed at a later date, indicates that a sufficient supply of comparable replacement housing may not be available for all residents on the approved location, the State may submit a request for program approval to proceed with preliminary studies as required by § 740.116. Either at time of program approval or subsequently, the division engineer may issue a letter of authorization to the State to proceed with the studies.

(2) *Plan.* If the analysis of the preliminary studies indicates that a last resort housing plan is required, and FHWA concurs, the development of a replacement housing plan shall be authorized in accordance with the requirements of § 740.117.

(3) *Construction.* Upon approval of the last resort housing plan, FHWA may authorize the State to proceed with the proposed construction.

§ 740.115 Federal participation.

(a) *Eligible costs.* Federal-aid funds will participate in the actual costs incurred by the State in providing last resort housing when incurred in accordance with this subpart. Such costs include but are not limited to:

(1) The acquisition price of land and/or dwellings and costs incidental thereto.

(2) Moving of houses.

(3) Site development.

(4) Architect and engineering fees.

(5) Landscaping.

(6) Rehabilitation.

(7) Construction of new housing.

(8) Reasonable legal fees and expenses.

(9) Other reasonable expenditures necessary to produce dwelling units which are compatible with other dwellings in the neighborhood in which they are constructed and acceptable to general real estate market.

(10) Any direct costs of providing last resort housing incurred by a State highway department, political subdivision, or local public agency.

(b) *Federal share.* Federal reimbursement for the costs of last resort housing shall be determined in accordance with the appropriate Federal pro-rata share of funds involved or the maximum reimbursement prescribed by the Federal law in effect when the project costs were obligated. Federal-aid funds will not participate until the State is in compliance with provisions of the current governing FHWA relocation assistance and payments policies and procedures.

§ 740.116 Preliminary housing studies.

(a) *Inventory of replacement housing.* Whenever, in connection with the planning, development or execution of a Federal or federally assisted project, it appears that a sufficient supply of comparable decent, safe and sanitary replacement housing may not be available to satisfy the requirements of 42 U.S.C. 4601 et seq., or that such housing is not available on a nondiscriminatory or fair housing basis, the State shall undertake the following, using existing data and supplementing it where necessary, to ascertain more precisely the need to construct housing:

(1) Prepare an inventory of the characteristics and relocation needs, desires and intentions of the families and individuals to be displaced.

(2) Prepare an inventory of available housing which shall include:

(i) Currently available comparable decent, safe and sanitary replacement sale and rental housing; and

(ii) Housing planned to be constructed or rehabilitated and which will be available as comparable replacement housing.

(iii) The inventories under paragraph (a) (2) (i) and (ii) of this section shall not include housing planned to be removed or demolished by the highway project or by governmental or private agencies.

(3) In preparing such inventories, the State shall consult Federal, State or local agencies which may be able to provide such housing or are knowledgeable with respect to housing programs. In order to avoid reliance by more than one displacing agency on the same replacement housing resource, the State shall coordinate with the other displacing agencies with respect to the utilization and allocation of these resources. The

timing of the highway project must also be taken into consideration in preparing the inventories.

(b) *Analysis of inventories.* The State shall correlate and analyze the information contained in the above inventories. If last resort housing funds are to be utilized, this analysis must reasonably show that the project cannot proceed to actual construction because comparable replacement or rental of decent, safe and sanitary housing is not reasonably anticipated to be available and cannot be made available.

§ 740.117 Replacement housing plan.

(a) *Plan requirements.* If the analysis of the information gathered in accordance with § 740.116 indicates that the construction of last resort housing is necessary, the State shall develop or cause to be developed such a plan designed to produce comparable decent, safe and sanitary replacement housing. In the development of the plan, innovative approaches and methods for the provision of suitable replacement housing are encouraged. A detailed analysis of the needs of each displacee shall be considered when planning the type of housing necessary to meet these needs. The plan shall include:

(1) A statement that the methods proposed in the plan to provide comparable decent, safe and sanitary replacement housing can be legally accomplished in accordance with State law.

(2) How, when and where housing will be provided.

(3) The environmental suitability of the location of the proposed housing.

(4) The environmental impact of the proposed housing.

(i) Where the replacement housing plan shows that not more than 100 units of last resort housing must be provided the discussion of the environmental effects of such housing in the replacement housing plan would ordinarily support a negative declaration under Federal Highway Administration environmental requirements that the proposed housing project does not significantly affect the quality of the human environment unless the project is controversial.

(ii) Housing projects of more than 100 units may significantly affect the quality of human environment and hence may require an environmental impact statement as required by Federal Highway Administration Environmental requirements. If the proposed housing project

does not significantly affect the human environment, the discussion and analysis of the environmental impact in the replacement housing plan would be sufficient to support a negative declaration. If the proposed housing project does significantly affect the human environment an environmental impact statement must be prepared for the housing project or the highway project environmental impact statement may be supplemented.

(iii) The size of the last resort housing project should be used merely as a guide and not as an absolute in determining whether or not an environmental impact statement must be prepared. The Federal Highway Administration environmental requirements must be followed in any environmental discussion or in preparing a negative declaration or an environmental impact statement.

(5) How it will be financed and the amount of project funds to be diverted to such housing:

(i) By contractual arrangement with State and local housing agencies.

(ii) By contractual arrangement with HUD or the Farmers Home Administration.

(iii) Contract with nonprofit or for profit organizations experienced in the development of housing.

(iv) Interest subsidy payments.

(v) Direct construction by the State.

(6) The prices within the financial means of the families and individuals to be displaced at which the housing will be rented or sold.

(7) The arrangements for maintaining rent levels appropriate for the persons to be rehoused.

(8) The arrangements for rental housing management.

(9) The disposition of the proceeds from rental, sale or resale of such housing.

(10) How the construction will be monitored.

(11) Any other comments pertinent to providing replacement housing.

(b) *Consultation.* From the inception of the last resort housing plan and continuing during the course of its development, the State shall consult with HUD (or the Farmers Home Administration) where appropriate and with the residents to be displaced or their representatives.

(c) *25 units or less.* If the total need for replacement housing to be provided under 42 U.S.C. 4626 by a single last resort housing project (or in the case of

joint development with other agencies, by several projects) is for 25 dwelling units or less, the State may plan and provide such housing without the assistance of an advisory committee or review by other agencies. The plan must be reviewed and approved by the division engineer as specified in § 740.114. The State shall be guided by the HUD project selection criteria and minimum property standards (see subdivision (e) (1) (ii) of this section) for comparable Federal housing programs and shall comply with the policies, requirements and procedures specified in § 740.112(c).

(d) *More than 25 units.* Where the construction of replacement dwellings involves more than 25 units on a single last resort housing project the State shall appoint an Advisory committee which shall consult with and provide assistance to the State, or its selected organization, in the development of the plan.

(1) The advisory committee shall include representatives of the following:

(i) The State and its selected organization, if any.

(ii) The chief executive officer of the jurisdiction in which displacement will occur.

(iii) State and local agencies knowledgeable regarding housing in the area, including but not limited to the local housing authority, local redevelopment agency, and centralized relocation agency, if any.

(iv) In addition, the committee should include representatives of other appropriate public (e.g., local and areawide planning agencies) and private groups knowledgeable regarding housing and the problems of housing discrimination as well as representatives of affected residents to be displaced.

(v) The failure of any person to participate on the committee shall not preclude the committee from satisfying the requirement of this paragraph.

(2) If the State elects not to develop a replacement housing plan with its own forces, it shall engage a State or local housing agency, or other agency or organization having experience in the administration or conduct of housing programs to develop the last resort housing plan. In such cases, the State shall appoint an advisory committee to work with the agency or organization so engaged. The advisory committee shall be constituted and shall function as under the provisions of subparagraph (d) (1) above.

(e) *Submission of the last resort housing plan for review.* Where more than 25 dwelling units are to be constructed, the State shall submit the replacement housing plan to HUD (or the Farmers Home Administration, where appropriate) and the Regional and State Clearinghouses designated pursuant to OMB Circular No. A-95.

(1) HUD (or the Farmers Home Administration, where appropriate) shall review and comment on the plan with respect to:

(i) Plan feasibility.

(ii) Project selection criteria in determining priority of funding projects under Sections 235(i) and 236 of the National Housing Act (12 U.S.C. 17z and 17z-1), rent supplement projects and low-rent housing assistance applications under the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.).

(iii) Minimum property standards for:

(A) One- and two-family dwellings (FHA No. 300).

(B) Multi-family housing (FHA No. 2600).

(C) Nursing homes (FHA No. 4514.1).

(D) Housing for elderly (HUD PG 46).

(iv) Environmental standards and procedures as provided in paragraph (a) (3) of this section.

(v) Compatibility with local and area-wide housing plans, provided that such plans are in compliance with § 740.112(c).

(vi) Compliance with the Civil Rights Acts and Executive Orders specified in § 740.112(c).

(2) The Regional and State Clearinghouses shall review and comment on the plan with respect to its compatibility with the areawide housing plan or strategy developed or being developed by the Regional Planning Agency.

(3) HUD (or the Farmers Home Administration, where appropriate) and the Regional and State Clearinghouses shall review the plan and submit comments to the State within 30 calendar days after receipt of the plan. If necessary for the timely implementation of the plan or execution of the projects, the State may shorten the time allowed for review and comment to some reasonable period less than 30 days.

(f) *Revision of last resort housing plan after review.* Upon receipt and consideration of the comments on the plan,

the State shall revise the plan, if deemed necessary by the State, to correct negative comments resulting from the above reviews.

(g) *Review of substantial modifications.* Any substantial modifications in the plan, except those made in accord with such comments, should be resubmitted for review and comments unless time does not permit. Whenever an amended plan is resubmitted for review and comment, a copy may also be provided to the advisory committee for simultaneous review.

(h) *State determination of compliance.* Subsequent to receipt of review comments and modification of the plan, if deemed necessary, or if the 30-day review period has passed without receiving any comments, the State shall make a determination that the plan is in substantial compliance with paragraph (e) of this section, and shall submit it to the division engineer for his approval or disapproval.

(i) *Aggregate housing under jointly financed programs.* Where several agencies are administering programs resulting in residential displacement, opportunities shall be sought out for joint development and financing in order to aggregate their resources to provide replacement housing in sufficient quantity to satisfy the aggregate needs of such programs.

§ 740.118 Implementation of housing plan.

(a) *Use of other agencies.* Whenever practicable, the State may utilize the services of Federal, State or local housing agencies, or other agencies, groups or individuals having experience in the administration or conduct of similar housing programs.

(b) *Inspection of construction.* The State shall monitor, with its own forces or qualified fee personnel, the construction of replacement housing to assure that it is in accordance with the last resort housing plan. A final inspection shall be made and the signed certification of acceptability of the construction shall be in the State files.

(c) *Utilization of small and minority firms.* The use of small and minority firms and firms located in or near the project area, and the employment of residents of the project area, are encouraged.

§ 740.119 Advice and technical assistance by HUD and other Federal agencies.

Throughout the entire planning, development and implementation process, the HUD Area or Insuring Office Director shall provide the State with advice, technical assistance and general information requested by the State. HUD shall

also review pending applications for housing subsidy assistance or mortgage insurance to determine the effect on any estimated replacement housing deficit and keep the State advised as applications are received or commitments are made that are likely to affect any estimated deficit. Where appropriate, the Farmers Home Administration shall provide the State with similar assistance.

Appendix A - Moving Expense Schedule Form

MOVING EXPENSE SCHEDULE											STATE
A UNFURNISHED UNITS			(OCCUPANT OWNS FURNITURE)								MAXIMUM: \$300 UNDER LAST SCHEDULE
First Type	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms	9 Rooms	10 Rooms		
B FURNISHED UNITS			INCLUDING SLEEPING ROOMS (OCCUPANT DOES NOT OWN FURNITURE)								DISLOCATION ALLOWANCE: AN ADDITIONAL \$200 UNDER EACH SCHEDULE
First Room											
C MOBILE HOMES											D PERSONALITY ONLY

APPENDIX B—COMPUTATION OF INCREASED INTEREST COST

Example No. 1

	Mortgage data	
	Existing mortgage	New mortgage
Interest rate.....	6 percent	8 percent
Remaining term.....	10 years	10 years
Remaining principal balance.....	\$7,295.93	\$10,000.00
Monthly principal and interest payment.....	81.02	121.32
Existing mortgage computation (maximum payment):		
Monthly P&I payment—\$7,295.93 for 10 years at 8 percent.....	88.57	
Monthly P&I payment—\$7,295.93 for 10 years at 6 percent.....	81.02	
Monthly interest difference.....	7.55	
Present worth of \$7.55 monthly for 10 years discounted at 5 percent savings deposit rate (\$7.55 x 94.281) (The factor 94.281 is obtained from the present worth of one per period table.).....	711.82	
New mortgage computation: ¹		
Monthly P&I payment—\$10,000 for 10 years at 8 percent.....		121.32
Monthly P&I payment—\$10,000 for 10 years at 6 percent.....		111.02
Monthly interest difference.....		10.30
Present worth of \$10.30 monthly for 10 years discounted at savings deposit rate (\$10.30 x 94.281).....		971.09
Amount of interest payment.....		711.82

Example No. 2

	Mortgage data	
	Existing mortgage	New mortgage
Interest rate.....	6 percent	8 percent
Remaining term.....	10 years	5 years
Remaining principal balance.....	7,295.93	6,000.00
Monthly principal and interest payment.....	81.02	121.65
Existing mortgage computation (maximum payment):		
Monthly P&I payment—\$7,295.93 for 10 years at 8 percent.....	88.57	
Monthly P&I payment—\$7,295.93 for 10 years at 6 percent.....	81.02	
Monthly interest difference.....	7.55	
Present worth of \$7.55 monthly for 10 years discounted at 5% savings deposit rate (\$7.55x94.281).....	711.82	
New mortgage computation:¹		
Monthly P&I payment—\$6,000 for 5 years at 8 percent.....		121.65
Monthly P&I payment—\$6,000 for 5 years at 6 percent.....		115.99
Monthly interest difference.....		5.66
Present worth of \$5.66 monthly for 5 years discounted at 5% savings deposit rate (\$5.66x52.991).....		299.98
Amount of interest payment.....		299.98

¹ New mortgage computation not necessary if new mortgage is for the same amount and term of the old mortgage. The Financial Compound Interest and Annuity Tables used for these computations.

PARTS 741—749 [RESERVED]

PART 750—HIGHWAY BEAUTIFICATION

Subpart A—National Standards for Regulation by States of Outdoor Advertising Adjacent to the Interstate System Under the 1958 Bonus Program

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750.101	Purpose.
750.102	Definitions.
750.103	Measurements of distance.
750.104	Signs that may not be permitted in protected areas.
750.105	Signs that may be permitted in protected areas.
750.106	Class 3 and 4 signs within informational sites.
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750.108	General provisions.
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750.151	Purpose.
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Subpart C [Reserved]

Subpart D—Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)

750.301	Purpose.
750.302	Policy.
750.303	Definitions.
750.304	State policies and procedures.

Sec.	
750.305	Federal participation.
750.306	Documentation for Federal participation.
750.307	FHWA project approval.
750.308	Reports.

Source: 38 FR 16044, June 20, 1973, unless otherwise noted.

Subpart A—National Standards for Regulation by States of Outdoor Advertising Adjacent to the Interstate System Under the 1958 Bonus Program¹

AUTHORITY: Sec. 12, Pub. Law 85-381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

§ 750.101 Purpose.

(a) In section 12 of the Federal-Aid Highway Act of 1958, Pub. L. 85-381, 72 Stat. 95, hereinafter called the "act," the Congress declared that:

(1) To promote the safety, convenience, and enjoyment of public travel and the free flow of interstate commerce and to protect the public investment in the National System of Interstate and Defense Highways, hereinafter called the "Interstate System," it is in the public interest to encourage and assist the States to control the use of and to improve areas adjacent to such sys-

¹ 39 FR 28629, Aug. 9, 1974.

tem by controlling the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to that system.

(2) It is a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within 660 feet of the edge of the right-of-way and visible from the main-traveled way of all portions of the Interstate System constructed upon any part of right-of-way, the entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary of Transportation.

(b) The standards in this part are hereby promulgated as provided in the act.

[38 FR 16044, June 20, 1973, as amended at 39 FR 28629, Aug. 9, 1974]

§ 750.102 Definitions.

The following terms when used in the standards in this part have the following meanings:

(a) **Acquired for right-of-way** means acquired for right-of-way for any public road by the Federal Government, a State, or a county, city, or other political subdivision of a State, by donation, dedication, purchase, condemnation, use, or otherwise. The date of acquisition shall be the date upon which title (whether fee title or a lesser interest) vested in the public for right-of-way purposes under applicable Federal or State law.

(b) **Centerline of the highway** means a line equidistant from the edges of the median separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a nondivided Interstate Highway.

(c) **Controlled portion of the Interstate System** means any portion which:

(1) Is constructed upon any part of right-of-way, the entire width of which is acquired for right-of-way subsequent to July 1, 1956 (a portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the centerline of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956);

(2) Lies within a State, the highway department of which has entered into an agreement with the Secretary of Transportation as provided in the act; and

(3) Is not excluded under the terms of the act which provide that agreements entered into between the Secretary of Transportation and the State highway department shall not apply to those segments of the Interstate System which traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use as of September 21, 1959, was clearly established by State law as industrial or commercial.

(d) **Entrance roadway** means any public road or turning roadway, including acceleration lanes, by which traffic may enter the main-traveled way of an Interstate Highway from the general road system within a State, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.

(e) **Erect** means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) **Exit roadway** means any public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of an Interstate Highway to reach the general road system within a State, irrespective of whether traffic may also enter the main-traveled way by such road or turning roadway.

(g) **Informational site** means an area or site established and maintained within or adjacent to the right-of-way of a highway on the Interstate System by or under the supervision or control of a State highway department, wherein panels for the display of advertising and informational signs may be erected and maintained.

(h) **Legible** means capable of being read without visual aid by a person of normal visual acuity.

(i) **Maintain** means to allow to exist.

(j) **Main-traveled way** means the traveled way of an Interstate Highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(k) Protected areas means all areas inside the boundaries of a State which are adjacent to and within 660 feet of the edge of the right-of-way of all controlled portions of the Interstate System within that State. Where a controlled portion of the Interstate System terminates at a State boundary which is not perpendicular or normal to the centerline of the highway, protected areas also means all areas inside the boundary of such State which are within 660 feet of the edge of the right-of-way of the Interstate Highway in the adjoining State.

(l) Scenic area means any public park or area of particular scenic beauty or historical significance designated by or pursuant to State law as a scenic area.

(m) Sign means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of a controlled portion of the Interstate System.

(n) State means the District of Columbia and any State of the United States within the boundaries of which a portion of the Interstate System is located.

(o) State law means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to State constitution or statute.

(p) Trade name shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

(q) Traveled way means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(r) Turning roadway means a connecting roadway for traffic turning between two intersection legs of an interchange.

(s) Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

§ 750.103 Measurements of distance.

(a) Distance from the edge of a right-of-way shall be measured horizontally along a line normal or perpendicular to the centerline of the highway.

(b) All distances under 750.107 (a) (2) and (b) shall be measured along the centerline of the highway between two vertical planes which are normal or per-

pendicular to and intersect the centerline of the highway, and which pass through the termini of the measured distance.

§ 750.104 Signs that may not be permitted in protected areas.

Erection or maintenance of the following signs may not be permitted in protected areas:

(a) Signs advertising activities that are illegal under State or Federal laws or regulations in effect at the location of such signs or at the location of such activities.

(b) Obsolete signs.

(c) Signs that are not clean and in good repair.

(d) Signs that are not securely affixed to a substantial structure, and

(e) Signs that are not consistent with the standards in this part.

§ 750.105 Signs that may be permitted in protected areas.

(a) Erection or maintenance of the following signs may be permitted in protected areas:

Class 1—Official signs. Directional or other official signs or notices erected and maintained by public officers or agencies pursuant to and in accordance with direction or authorization contained in State or Federal law, for the purpose of carrying out an official duty or responsibility.

Class 2—On-premise signs. Signs not prohibited by State law which are consistent with the applicable provisions of this section and § 750.108 and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located.

Not more than one such sign advertising the sale or lease of the same property may be permitted under this class in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway.

Not more than one such sign, visible to traffic proceeding in any one direction on any one Interstate Highway and advertising activities being conducted upon the real property where the sign is located, may be permitted under this class more than 50 feet from the advertised activity.

Class 3—Signs within 12 miles of advertised activities. Signs not prohibited by State law which are consistent with the applicable provisions of this section and §§ 750.106, 750.107, and 750.108 and which advertise activities being conducted within 12 air miles of such signs.

Class 4—Signs in the specific interest of the traveling public. Signs authorized to be erected or maintained by State law which are consistent with the applicable provisions of this section and §§ 750.106, 750.107, and 750.108 and which are designed to give infor-

man in the specific interest of the traveling public.

(b) A Class 2 or 3 sign, except a Class 2 sign not more than 50 feet from the advertised activity, that displays any trade name which refers to or identifies any service rendered or product sold, used, or otherwise handled more than 12 air miles from such sign may not be permitted unless the name of the advertised activity which is within 12 air miles of such sign is displayed as conspicuously as such trade name.

(c) Only information about public places operated by Federal, State, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation and places for camping, lodging, eating, and vehicle service and repair is deemed to be in the specific interest of the traveling public. For the purposes of the standards in this part, a trade name is deemed to be information in the specific interest of the traveling public only if it identifies or characterizes such a place or identifies vehicle service, equipment, parts, accessories, fuels, oils, or lubricants being offered for sale at such a place. Signs displaying any other trade name may not be permitted under Class 4.

(d) Notwithstanding the provisions of paragraph (b) of this section, Class 2 or Class 3 signs which also qualify as Class 4 signs may display trade names in accordance with the provisions of paragraph (c) of this section.

§ 750.106 Class 3 and 4 signs within informational sites.

(a) Informational sites for the erection and maintenance of Class 3 and 4 advertising and informational signs may be established in accordance with the Regulations for the Administration of Federal-Aid for Highways. The location and frequency of such sites shall be as determined by agreements between the Secretary of Transportation and the State highway departments.

(b) Class 3 and 4 signs may be permitted within such informational sites in protected areas in a manner consistent with the following provisions:

(1) No sign may be permitted which is not placed upon a panel.

(2) No panel may be permitted to exceed 13 feet in height or 25 feet in length, including border and trim, but excluding supports.

(3) No sign may be permitted to exceed 12 square feet in area, and nothing on such sign may be permitted to be legible from any place on the main-traveled way or a turning roadway.

(4) Not more than one sign concerning a single activity or place may be permitted within any one informational site.

(5) Signs concerning a single activity or place may be permitted within more than one informational site, but no Class 3 sign which does not also qualify as a Class 4 sign may be permitted within any informational site more than 12 air miles from the advertised activity.

(6) No sign may be permitted which moves or has any animated or moving parts.

(7) Illumination of panels by other than white lights may not be permitted, and no sign placed on any panel may be permitted to contain, include, or be illuminated by any other lights, or any flashing, intermittent, or moving lights.

(8) No lighting may be permitted to be used in any way in connection with any panel unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

[23 FR 8793, Nov. 13, 1970, as amended at 35 FR 18719, Dec. 10, 1970]

§ 750.107 Class 3 and 4 signs outside informational sites.

(a) The erection or maintenance of the following signs may be permitted within protected areas, outside informational sites:

(1) Class 3 signs which are visible only to Interstate highway traffic not served by an informational site within 12 air miles of the advertised activity;

(2) Class 4 signs which are more than 12 miles from the nearest panel within an informational site serving Interstate highway traffic to which such signs are visible.

(3) Signs that qualify both as Class 3 and 4 signs may be permitted in accordance with either subparagraph (1) or (2) of this paragraph.

(b) The erection or maintenance of signs permitted under paragraph (a) of

this section may not be permitted in any manner inconsistent with the following:

(1) In protected areas in advance of an intersection of the main-traveled way of an Interstate highway and an exit roadway, such signs visible to Interstate highway traffic approaching such intersection may not be permitted to exceed the following number:

Distance from intersection:	Number of signs
0-2 miles.....	0.
2-5 miles.....	6.
More than 5 miles.....	Average of one sign per mile.

The specified distances shall be measured to the nearest point of the intersection of the traveled way of the exit roadway and the main-traveled way of the Interstate highway.

(2) Subject to the other provisions of this paragraph, not more than two such signs may be permitted within any mile distance measured from any point, and no such signs may be permitted to be less than 1,000 feet apart.

(3) Such signs may not be permitted in protected areas adjacent to any Interstate highway right-of-way upon any part of the width of which is constructed an entrance or exit roadway.

(4) Such signs visible to Interstate highway traffic which is approaching or has passed an entrance roadway may not be permitted in protected areas for 1,000 feet beyond the furthest point of the intersection between the traveled way of such entrance roadway and the main-traveled way of the Interstate highway.

(5) No such signs may be permitted in scenic areas.

(6) Not more than one such sign advertising activities being conducted as a single enterprise or giving information about a single place may be permitted to be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one Interstate highway.

(c) No Class 3 or 4 signs other than those permitted by this section may be permitted to be erected or maintained within protected areas, outside informational sites.

§ 750.108 General provisions.

No Class 3 or 4 signs may be permitted to be erected or maintained pursuant to § 750.107, and no Class 2 sign may be permitted to be erected or maintained, in

any manner inconsistent with the following:

(a) No sign may be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.

(b) No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(c) No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.

(d) No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(e) No sign may be permitted which moves or has any animated or moving parts.

(f) No sign may be permitted to be erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(g) No sign may be permitted to exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim but excluding supports, except Class 2 signs not more than 50 feet from, and advertising activities being conducted upon, the real property where the sign is located.

§ 750.109 Exclusions.

The standards in this part shall not apply to markers, signs and plaques in appreciation of sites of historical significance for the erection of which provisions are made in an agreement between a State and the Secretary of Transportation, as provided in the Act, unless such agreement expressly makes all or any part of the standards applicable.

§ 750.110 State regulations.

A State may elect to prohibit signs permissible under the standards in this part without forfeiting its rights to any benefits provided for in the act.

Subpart B—National Standards for Directional and Other Official Signs

AUTHORITY: Issued under 23 U.S.C. 131, 315, 49 U.S.C. 1651; delegation of authority in 49 CFR 1.4(d).

§ 750.151 Purpose.

(a) In section 131 of title 23, United States Code, Congress has declared that:

(1) The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote safety and recreational value of public travel, and to preserve natural beauty.

(2) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, shall conform to national standards authorized to be promulgated by the Secretary, which standards shall contain provisions concerning the lighting, size, number and spacing of signs, and such other requirements as may be appropriate to implement the section.

(b) The standards in this part are issued as provided in section 131 of title 23, United States Code.

§ 750.152 Application.

The following standards apply to directional and other official signs and notices which are erected and maintained within 660 feet of the nearest edge of the right-of-way of the Interstate and Federal-aid primary system, and which are visible from the main traveled way of the system. These standards do not apply to directional and other official signs erected on the highway right-of-way.

§ 750.153 Definitions.

For the purpose of this part—

(a) **Sign** means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.

(b) **Main traveled way** means the through traffic lanes of the highway, ex-

clusive of frontage roads, auxiliary lanes, and ramps.

(c) **Interstate System** means the National System of Interstate and Defense Highways described in section 103(d) of title 23, United States Code.

(d) **Primary system** means the Federal-aid highway system described in section 103(b) of title 23, United States Code.

(e) **Erect** means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) **Maintain** means to allow to exist.

(g) **Scenic area** means any area of particular scenic beauty or historical significance as determined by the Federal, State, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

(h) **Parkland** means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

(i) **Federal or State law** means a Federal or State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State or Federal agency or a political subdivision of a State pursuant to a Federal or State constitution or statute.

(j) **Visible** means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(k) **Freeway** means a divided arterial highway for through traffic with full control of access.

(l) **Rest area** means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.

(m) **Directional and other official signs and notices** includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

(n) **Official signs and notices** means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State, or local law for the purposes of carrying out an official duty or responsibility. Historical mark-

ers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

(o) Public utility signs means warning signs, informational signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

(p) Service club and religious notices means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs do not exceed 8 square feet in area.

(q) Public service signs means signs located on school bus stop shelters, which signs—

(1) Identify the donor, sponsor, or contributor of said shelters;

(2) Contain public service messages, which shall occupy not less than 50 percent of the area of the sign;

(3) Contain no other message;

(4) Are located on schoolbus shelters which are authorized or approved by city, county, or State law, regulation, or ordinance, and at places approved by the city, county, or State agency controlling the highway involved; and

(5) May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

(r) Directional signs means signs containing directional information about public places owned or operated by Federal, State, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

(s) State means any one of the 50 States, the District of Columbia, or Puerto Rico.

§ 750.154 Standards for directional signs.

The following apply only to directional signs:

(a) *General.* The following signs are prohibited:

(1) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of those activities.

(2) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

(3) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(4) Obsolete signs.

(5) Signs which are structurally unsafe or in disrepair.

(6) Signs which move or have any animated or moving parts.

(7) Signs located in rest areas, parklands or scenic areas.

(b) *Size.* (1) No sign shall exceed the following limits:

(i) Maximum area—150 square feet.

(ii) Maximum height—20 feet.

(iii) Maximum length—20 feet.

(2) All dimensions include border and trim, but exclude supports.

(c) *Lighting.* Signs may be illuminated, subject to the following:

(1) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(2) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(3) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

(d) *Spacing.* (1) Each location of a directional sign must be approved by the State highway department.

(2) No directional sign may be located within 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

(3) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.

(4) (i) No two directional signs facing the same direction of travel shall be spaced less than 1 mile apart;

(ii) Not more than three directional signs pertaining to the same activity and

facing the same direction of travel may be erected along a single route approaching the activity;

(iii) Signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and

(iv) Signs located adjacent to the primary system shall be within 50 air miles of the activity.

(e) *Message content.* The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

(f) *Selection method and criteria.* (1) Privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas.

(2) To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.

(3) Each State shall develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing. A statement as to selection methods and criteria shall be furnished to the Secretary of Transportation before the State permits the erection of any such signs under section 131(c) of title 23, United States Code, and this part.

§ 750.155 State standards.

This part does not prohibit a State from establishing and maintaining standards which are more restrictive with respect to directional and other official signs and notices along the Federal-aid highway systems than these national standards.

Subpart C [Reserved]

Subpart D—Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)

AUTHORITY: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

SOURCE: 39 FR 27436, July 29, 1974, unless otherwise noted.

§ 750.301 Purpose.

To prescribe the Federal Highway Administration (FHWA) policies relating to Federal participation in the costs of ac-

quiring the property interests necessary for removal of nonconforming advertising signs, displays and devices on the Federal-aid Primary and Interstate Systems, including toll sections on such systems, regardless of whether Federal funds participated in the construction thereof. This regulation should not be construed to authorize any additional rights in eminent domain not already existing under State law or under 23 U.S.C. 131(g).

§ 750.302 Policy.

(a) Just compensation shall be paid for the sign and site owner's rights and interests in or pertaining to the following outdoor advertising signs, displays and devices:

(1) Those lawfully in existence on October 22, 1965;

(2) Those lawfully on any highway made a part of the Interstate or Primary System on or after October 22, 1965, and before January 1, 1968; and

(3) Signs lawfully erected on or after January 1, 1968 in accordance with 23 U.S.C. 131 (Highway Beautification Act).

(b) Federal reimbursement will be made on the basis of 75 percent of the acquisition, removal and incidental costs legally incurred or obligated by the State.

(c) Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.) applies except where complete conformity would defeat the purposes set forth in 42 U.S.C. 4651, would impede the expeditious implementation of the sign removal program or would increase administrative costs out of proportion to the cost of the interests being acquired or extinguished.

(d) Projects for the removal of outdoor advertising signs including hardship acquisitions should be programed and authorized in accordance with normal program procedures for right-of-way projects.

[39 FR 27436, July 29, 1974; 39 FR 30340, Aug. 22, 1974]

§ 750.303 Definitions.

(a) *Sign.* An outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the

same be permanent or portable installation.

(b) *Lease* (license, permit, agreement, contract or easement). An agreement, oral or in writing, by which possession or use of land or interests therein is given by the owner or other person to another person for a specified purpose.

(c) *Leasehold value*. The leasehold value is the present worth of the difference between the contractual rent and the current market rent at the time of the appraisal.

(d) *Illegal sign*. One which was erected and/or maintained in violation of State law.

(e) *Nonconforming sign*. One which was lawfully erected, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State law or State regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(f) *1966 Inventory*. The record of the survey of advertising signs and junkyards compiled by the State highway department.

(g) *Abandoned sign*. One in which no one has an interest, or as defined by State law.

\$ 750.304 State policies and procedures.

The State's written policies and operating procedures for implementing its sign removal program under State law and complying with 23 U.S.C. 131 and its proposed time schedule for sign removal and procedure for reporting its accomplishments shall be submitted to the FHWA for approval within 90 days of the date of this regulation. This statement should be supported by the State's regulations implementing its program. Revisions to the State's policies and procedures shall be submitted to the FHWA for approval. The statement should contain provisions for the review of its policies and procedure to meet changing conditions, adoption of improved procedures, and for internal review to assure compliance. The statement shall include as a minimum the following:

(a) *Project priorities*. The following order of priorities is recommended.

- (1) Illegal and abandoned signs.
- (2) Hardship situations.
- (3) Nominal value signs.

(4) Signs in areas which have been designated as scenic under authority of State law.

(5) *Product advertising on:*

- (i) Rural Interstate highway.
- (ii) Rural primary highway.
- (iii) Urban areas.

(6) *Nontourist-oriented directional advertising*.

(7) *Tourist oriented directional advertising*.

(b) *Programming*. (1) A sign removal project may consist of any group of proposed sign removals. The signs may be those belonging to one company on those located along a single route, all of the signs in a single county or other locality, hardship situations, individually or grouped, such as those involving vandalized signs, or all of a sign owner's signs in a given State or area, or any similar grouping.

(2) A project for sign removal on other than a Federal-aid primary route basis e.g., a countywide project or a project involving only signs owned by one company, should be identified as CAF-000B(), continuing the numbering sequence which began with the sign inventory project in 1966.

(3) Where it would not interfere with the State's operations, the State should program sign removal projects to minimize disruption of business.

(c) *Valuation and review methods*.

(1) *Schedules*—formulas. Schedules, formulas or other methods to simplify valuation of signs and sites are recommended for the purpose of minimizing administrative and legal expenses necessarily involved in determining just compensation by individual appraisals and litigation. They do not purport to be a basis for the determination of just compensation under eminent domain.

(2) *Appraisals*. Where appropriate, the State may use its approved appraisal report forms including those for abbreviated or short form appraisals. Where a sign or site owner does not accept the amount computed under an approved schedule, formula, or other simplified method, an appraisal shall be utilized.

(3) *Leaseholds*. When outdoor advertising signs and sign sites involve a leasehold value, the State's procedures should provide for determining value in the same manner as any other real estate leasehold that has value to the lessee.

(4) *Severance Damages*. The State has the responsibility of justifying the recognition of severance damages pursuant to 23 CFR 710.24, and the law of the State before Federal participation will be allowed. Generally, Federal participation

will not be allowed in the payment of severance damages to remaining signs, or other property of a sign company alleged to be due to the taking of certain of the company's signs. Unity of use of the separate properties, as required by applicable principles of eminent domain law, must be shown to exist before participation in severance damages will be allowed. Moreover, the value of the remaining signs or other real property must be diminished by virtue of the taking of such signs. Payments for severance damages to economic plants or loss of business profits are not compensable. Severance damage cases must be submitted to the FHWA for prior concurrence, together with complete legal and appraisal justification for payment of these damages. To assist the FHWA in its evaluation, the following data will accompany any submission regarding severance:

(i) One copy of each appraisal in which this was analyzed. One copy of the State's review appraiser analysis and determination of market value.

(ii) A plan or map showing the location of each sign.

(iii) An opinion by the State highway department's chief legal officer that severance is appropriate in accordance with State law together with a legal opinion that, in the instant case, the damages constitute severance as opposed to consequential damage as a matter of law. The opinion shall include a determination, and the basis therefor, that the specific taking of some of an outdoor advertiser's signs constitutes a distinct economic unit, and that unity of use of the separate properties in conformity with applicable principles of eminent domain law had been satisfactorily established. A legal memorandum must be furnished citing and discussing cases and other authorities supporting the State's position.

(5) *Review of value estimates.* All estimates of value shall be reviewed by a person other than the one who made the estimate. Appraisal reports shall be reviewed and approved prior to initiation of negotiations. All other estimates shall be reviewed before the agreement becomes final.

(d) *Nominal value plan.* (1) This plan may provide for the removal costs of eligible nominal value signs and for payments up to \$250 for each nonconforming sign, and up to \$100 for each nonconforming sign site.

(2) The State's procedures may provide for negotiations for sign sites and sign removals to be accomplished simultaneously without prior review.

(3) Releases or agreements executed by the sign and/or site owner should include the identification of the sign, statement of ownership, price to be paid, interest acquired, and removal rights.

(4) It is not expected that salvage value will be a consideration in most acquisitions; however, the State's procedures may provide that the sign may be turned over to the sign owner, site owner, contractor, or individual as all or a part of the consideration for its removal, without any project credits.

(5) Programing and authorizations will be in accord with § 750.308 of this regulation. A detailed estimate of value of each individual sign is not necessary. The project may be programed and authorized as one project.

(e) *Sign removal.* The State's procedural statement should include provision for:

(1) Owner retention.

(2) Salvage value.

(3) State removal.

§ 750.305 Federal participation.

(a) Federal funds may participate in:

(1) Payments made to a sign owner for his right, title and interest in a sign, and where applicable, his leasehold value in a sign site, and to a site owner for his right and interest in a site, which is his right to erect and maintain the existing nonconforming sign on such site.

(2) The cost of relocating a sign to the extent of the cost to acquire the sign, less salvage value if any.

(3) A duplicate payment for the site owner's interest of \$2,500 or less because of a bona fide error in ownership, provided the State has followed its title search procedures as set forth in its policy and procedure submission.

(4) The cost of removal of signs, partially completed sign structures, supporting poles, abandoned signs and those which are illegal under State law within the controlled areas, provided such costs are incurred in accordance with State law. Removal may be by State personnel on a force account basis or by contract. Documentation for Federal participation in such removal projects should be in accord with the State's normal force account and contractual reimbursement procedures. The State should maintain a record of the number of signs removed.

These data should be retained in project records and reported on the periodic report required under § 750.308 of this regulation.

(5) Signs materially damaged by vandals. Federal funds shall be limited to the Federal pro-rata share of the fair market value of the sign immediately before the vandalism occurred minus the estimated cost of repairing and reerecting the sign. If the State chooses, it may use its FHWA approved nominal value plan procedure to acquire these signs.

(6) The cost of acquiring and removing completed sign structures which have been blank or painted out beyond the period of time established by the State for normal maintenance and change of message, provided the sign owner can establish that his nonconforming use was not abandoned or discontinued, and provided such costs are incurred in accordance with State law, or regulation. The evidence considered by the State as acceptable for establishing or showing that the nonconforming use has not been abandoned or voluntarily discontinued shall be set forth in the State's policy and procedures.

(7) In the event a sign was omitted in the 1966 inventory, and the State supports a determination that the sign was in existence prior to October 22, 1965, the costs are eligible for Federal participation.

(b) Federal funds may not participate in:

(1) Cost of title certificates, title insurance, title opinion or similar evidence or proof of title in connection with the acquisition of a landowner's right to erect and maintain a sign or signs when the amount of payment to the landowner for his interest is \$2,500 or less, unless required by State law. However, Federal funds may participate in the costs of securing some lesser evidence or proof of title such as searches and investigations by State highway department personnel to the extent necessary to determine ownership, affidavit of ownership by the owner, bill of sale, etc. The State's procedure for determining evidence of title should be set forth in the State's policy and procedure submission.

(2) Payments to a sign owner where the sign was erected without permission of the property owner unless the sign owner can establish his legal right to erect and maintain the sign. However, such signs may be removed by State per-

sonnel on a force account basis or by contract with Federal participation except where the sign owner reimburses the State for removal.

(3) Acquisition costs paid for abandoned or illegal signs, potential sign sites, or signs which were built during a period of time which makes them ineligible for compensation under 23 U.S.C. 131, or for rights in sites on which signs have been abandoned or illegally erected by a sign owner.

(4) The acquisition cost of supporting poles or partially completed sign structures in nonconforming areas which do not have advertising or informative content thereon unless the owner can show to the State's satisfaction he has not abandoned the structure. When the State has determined the sign structure has not been abandoned, Federal funds will participate in the acquisition of the structure, provided the cost are incurred in accordance with State law.

§ 750.306 Documentation for Federal participation.

The following information concerning each sign must be available in the State's files to be eligible for Federal participation.

(a) *Payment to sign owner.* (1) A photograph of the sign in place. Exceptions may be made in cases where in one transaction the State has acquired a number of a company's nominal value signs similar in size, condition and shape. In such cases, only a sample of representative photographs need be provided to document the type and condition of the signs.

(2) Evidence showing the sign was nonconforming as of the date of taking.

(3) Value documentation and proof of obligation of funds.

(4) Satisfactory indication of ownership of the sign and compensable interest therein (e.g., lease or other agreement with the property owner, or an affidavit, certification, or other such evidence of ownership).

(5) Evidence that the sign falls within one of the three categories shown in § 750.302 of this regulation. The specific category should be identified.

(6) Evidence that the right, title, or interest pertaining to the sign has passed to the State, or that the sign has been removed.

(b) *Payment to the site owner.* (1) Evidence that an agreement has been reached between the State and owner.

(2) Value documentation and proof of obligation of funds.

(3) Satisfactory indication of ownership or compensable interest.

§ 750.307 FHWA project approval.

Authorization to proceed with acquisitions on a sign removal project shall not be issued until such time as the State has submitted to FHWA the following:

(a) A general description of the project.

(b) The total number of signs to be acquired.

(c) The total estimated cost of the sign removal project, including a breakdown of incidental, acquisition and removal costs.

§ 750.308 Reports.

Periodic reports on site acquisitions and actual sign removals shall be submitted on FHWA Form 1424 and as prescribed.

PART 751—JUNKYARD CONTROL AND ACQUISITION

Sec.

751.1 Purpose.

751.3 Applicability.

751.5 Policy.

751.7 Definitions.

751.9 Effective control.

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751.21 Relocation assistance.

751.23 Concurrent junkyard control and right-of-way projects.

751.25 Programming and authorization.

AUTHORITY: 23 U.S.C. 136 and 315, 42 U.S.C. 4321-4347 and 4601-4655, 23 CFR 1.32, 49 CFR 1.48.

SOURCE: 40 FR 8551, Feb. 28, 1975, unless otherwise noted.

§ 751.1 Purpose.

Pursuant to 23 U.S.C. 136, this Part prescribes Federal Highway Administration [FHWA] policies and procedures relating to the exercise of effective control by the States of junkyards in areas adjacent to the Interstate and Federal-aid primary systems. Nothing in this Part shall be construed to prevent a State from establishing more stringent junkyard control requirements than provided herein.

[40 FR 12260, Mar. 18, 1975]

§ 751.3 Applicability.

The provisions of this Part are applicable to all areas within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of all Federal-aid Primary and Interstate Systems regardless of whether Federal funds participated in the construction thereof, including toll sections of such highways. This Part does not apply to the Urban System.

§ 751.5 Policy.

In carrying out the purposes of this Part:

(a) Emphasis should be placed on encouraging recycling of scrap and junk where practicable, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.);

(b) Every effort should be made to screen nonconforming junkyards which are to continue as ongoing businesses; and

(c) Nonconforming junkyards should be relocated only as a last resort.

§ 751.7 Definitions.

For purposes of this Part, the following definitions shall apply:

(a) *Junkyard.* (1) A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, autorecycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.

(2) An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.

(3) An Illegal Junkyard is one which was established or is maintained in violation of State law.

(4) A Nonconforming Junkyard is one which was lawfully established, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State regulations due to changed conditions. Illegally established junkyards are not nonconforming junkyards.

(b) *Junk.* Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

(c) *Main Traveled Way.* The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(d) *Industrial Zones.* Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of volume 7, chapter 6, section 2 of the Federal-Aid Highway Program Manual relative to Outdoor Advertising Control shall apply insofar as industrial zones are concerned.¹

(e) *Unzoned Industrial Areas.* An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the FHWA. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

§ 751.9 Effective control.

(a) In order to provide effective control of junkyards located within 1,000 feet of Interstate and Federal-aid primary highways, the State must:

(1) Require such junkyards located outside of zoned and unzoned industrial areas to be screened or located so as not to be visible from the main traveled way, or be removed from sight.

(2) Require the screening or removal of nonconforming junkyards within a reasonable time, but no later than 5 years after the date the junkyard becomes

nonconforming unless Federal funds are not available in adequate amounts to participate in the cost of such screening or removal as provided in 23 U.S.C. 136 (j).

(3) Prohibit the establishment of new junkyards unless they comply with the requirements of paragraph (a) (1) of this section.

(4) Expeditiously require junkyards which are illegally established or maintained to conform to the requirements of paragraph (a) (1) of this section.

(b) Sanitary landfills as described herein need not be screened to satisfy requirements of Title 23, U.S.C., but landscaping should be required when the fill has been completed and operations have ceased, unless the landfill area is to be used for immediate development purposes. A sanitary landfill, for the purposes of this Part, is a method of disposing of refuse on land without creating a nuisance or hazards to public health or safety by utilizing the principles of engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary.

(c) The State shall have laws, rules, and procedures sufficient to provide effective control, to discover illegally established or maintained junkyards shortly after such occurrence, and to cause the compliance or removal of same promptly in accordance with State legal procedures.

§ 751.11 Nonconforming junkyards.

Subject to the provisions of § 751.9 above, the following requirements for the maintenance and continuance of a nonconforming junkyard apply:

(a) The junkyard must have been actually in existence at the time the State law or regulations became effective as distinguished from a contemplated use, except where a permit or similar specific State governmental action was granted for the establishment of a junkyard prior to the effective date of the State law or regulations, and the junkyard owner acted in good faith and expended sums in reliance thereon.

(b) There must be existing property rights in the junkyard or junk affected by the State law or regulation. Abandoned junk and junkyards, worthless

¹ The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7, App. D.

junk, and the like are not similarly protected.

(c) If the location of a nonconforming junkyard is changed as a result of a right-of-way taking or for any other reason, it ceases to be a nonconforming junkyard, and shall be treated as a new junkyard at a new location.

(d) The nonconforming junkyard must have been lawful on the effective date of the State law or regulations and must continue to be lawfully maintained.

(e) The nonconforming junkyard may continue as long as it is not extended, enlarged, or changed in use. Once a junkyard has been made conforming, the placement of junk so that it may be seen above or beyond a screen, or otherwise becomes visible, shall be treated the same as the establishment of a new junkyard.

(f) The nonconforming junkyard may continue as long as it is not abandoned, destroyed, or voluntarily discontinued. Each State should develop criteria to define these terms.

§ 751.13 Control measures.

(a) Consistent with the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), recycling of junk and scrap is to be encouraged to the greatest extent practicable in the implementation of the junkyard control program. Recycling should be considered in conjunction with other control measures. To facilitate recycling, junk or scrap should be moved to an automobile wrecker, or a scrap processor, or put to some other useful purpose.

(b) Every effort shall be made to screen where the junkyard is to continue as an ongoing business. Screening may be accomplished by use of natural objects, landscaping plantings, fences, and other appropriate means, including relocating inventory on site to utilize an existing natural screen or a screenable portion of the site.

(c) Where screening is used, it must, upon completion of the screening project, effectively screen the junkyard from the main traveled way of the highway on a year-round basis, and be compatible with the surroundings. Each State shall establish criteria governing the location, design, construction, maintenance, and materials used in fencing or screening.

(d) A junkyard should be relocated only when other control measures are not feasible. Junkyards should be relocated to a site not visible from the highway or to an industrial area, and should

not be relocated to residential, commercial, or other areas where foreseeable environmental problems may develop.

(e) The State may develop and use other methods of operation to carry out the purposes of this directive, subject to prior FHWA approval.

§ 751.15 Just compensation.

(a) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law, which are required to be removed, relocated, or disposed of pursuant to 23 U.S.C. 136.

(b) No rights to compensation accrue until a taking or removal has occurred. The conditions which establish a right to maintain and continue a nonconforming junkyard as provided in § 751.11 must pertain at the time of the taking or removal in order to establish a right to just compensation.

§ 751.17 Federal participation.

(a) Federal funds may participate in 75 percent of the costs of control measures incurred in carrying out the provisions of this Part including necessary studies for particular projects, and the employment of fee landscape architects and other qualified consultants.

(b) Where State control standards are more stringent than Federal control requirements along Interstate and primary highways, the FHWA may approve Federal participation in the costs of applying the State standards on a statewide basis. Where State standards require control of junkyards in zoned or unzoned industrial areas, Federal funds may participate only if such action will make an effective contribution to the character of the area as a whole and the cost is reasonable, but such projects should be deferred until the work in the areas where control is required has progressed well toward completion.

(c) Generally, only costs associated with the acquisition of minimal real property interests, such as easements or temporary rights of entry, necessary to accomplish the purposes of this Part are eligible for Federal participation. The State may request, on a case-by-case basis, participation in costs of other interests beyond the minimum necessary, including fee title.

(d) Federal funds may participate in costs to correct the inadequacies of screening in prior control projects where the inadequacy is due to higher screen-

ing standards established in this Part or due to changed conditions.

(e) Federal funds may participate in the costs of moving junk or scrap to a recycling place of business, or in the case of junk with little or no recycling potential, to a site for permanent disposal. In the latter case, reasonable land rehabilitation costs or fees connected with the use of such a disposal site are also eligible. In a case where the acquisition of a permanent disposal site by the State would be the most economical method of disposal, Federal funds may participate in the net cost (cost of acquisition less a credit after disposal) of a site obtained for this purpose.

(f) Federal funds may participate in control measure costs involved in any junkyard lawfully established or maintained under State law which is reclassified from conforming to nonconforming under revised State regulations and policy pursuant to this Part.

(g) Federal funds may participate in the costs of acquisition of a dwelling in exceptional cases where such acquisition is found necessary and in the public interest, and where acquisition of the dwelling can be accomplished without resort to eminent domain.

(h) Federal funds shall not participate in:

(1) Costs associated with the control of illegal junkyards except for removal by State personnel on a force account basis or by contract, or in costs of controlling junkyards established after the effective date of the State's compliance law except where a conforming junkyard later becomes nonconforming due to changed conditions;

(2) Any costs associated with the acquisition of any dwelling or its related buildings if acquired through eminent domain in connection with the junkyard control program;

(3) Costs of acquisition of interests or rights as a measure for prohibition or control of the establishment of future junkyards;

(4) Costs of maintaining screening devices after they have been erected; or

(5) Costs of screening junk which has been or will be removed as a part of a junkyard control project.

§ 751.19 Documentation for Federal participation.

The following information concerning each eligible junkyard must be available

in the States' files to be eligible for Federal participation in the costs thereof:

(a) Satisfactory evidence of ownership of the junk or junkyard or both.

(b) Value or cost documentation (including separate interests if applicable) including proof of obligation or payment of funds.

(c) Evidence that the necessary property interests have passed to the State and that the junk has been screened, relocated, removed or disposed of in accordance with the provisions of this Part.

(d) If a dwelling has been acquired by condemnation, evidence that the costs involved are not included in the State's claim for participation.

[40 FR 8551, Feb. 28, 1975; 40 FR 12260, Mar. 18, 1975]

§ 751.21 Relocation assistance.

Relocation assistance benefits pursuant to Part 740, 23 CFR are available for:

(a) The actual reasonable moving expenses of the junk, actual direct loss of tangible personal property and actual reasonable expenses in searching for a replacement business or, if the eligibility requirements are met, a payment in lieu of such expenses.

(b) Relocation assistance in locating a replacement business.

(c) Moving costs of personal property from a dwelling and relocation assistance in locating a replacement dwelling, provided the acquisition of the real property used for the business causes a person to vacate a dwelling.

(d) Replacement housing payments if the acquisition of the dwelling is found by FHWA to be necessary for the federally assisted junkyard control project.

§ 751.23 Concurrent junkyard control and right-of-way projects.

The State is encouraged to coordinate junkyard control and highway right-of-way projects. Expenses incurred in furtherance of concurrent projects shall be prorated between projects.

§ 751.25 Programming and authorization.

(a) Junkyard control projects shall be programmed in accordance with the provisions of volume 6, chapter 3, section 2, subsection 2, of the Federal-Aid Highway Program Manual.² Such projects may include one or more junkyards.

² The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7, App. D.

(b) Authorization to proceed with a junkyard control project may be given when the State submits a written request to FHWA which includes the following:

(1) The zoning and validation of the legal status of each junkyard on the project;

(2) The control measures proposed for each junkyard including, where applicable, information relative to permanent disposal sites to be acquired by the State;

(3) The real property interest to be acquired in order to implement the control measures;

(4) Plans or graphic displays indicating the location of the junkyard relative to the highway, the 1,000 foot control lines, property ownership boundaries, the general location of the junk or scrap material, and any buildings, structures, or improvement involved; and

(5) Where screening is to be utilized, the type of screening, and adequately detailed plans and cross sections, or other adequate graphic displays which illustrate the relationship of the motorist, the screen, and the material to be screened at critical points of view.

PART 752—SCENIC ENHANCEMENT— LANDSCAPE AND ROADSIDE DEVELOPMENT

Sec.

- 752.101 Purpose.
- 752.102 Funding and programming.
- 752.103 Abandoned vehicles.
- 752.104 Location and description of scenic lands.
- 752.105 Landscape development and erosion control.
- 752.106 Safety rest areas and scenic overlooks.
- 752.107 Information centers.
- 752.108 Privately operated information centers.

AUTHORITY: 23 U.S.C. 128, 315, 319; 49 CFR 1.48(b).

SOURCE: 39 FR 24630, July 5, 1974, unless otherwise noted.

§ 752.101 Purpose.

The purpose of this part is to furnish guidelines and prescribe policies and procedures for implementing 23 U.S.C. 319.

§ 752.102 Funding and programming.

(a) Section 319(a), Federal-aid Funds:

(1) Projects financed with section 319 (a) Federal-aid funds will be programmed and administered in accordance with established Federal-aid procedures.

(2) Section 319(a) Federal-aid funds are not available for billboard control, junkyard screening, nor for the acquisition of interests in or development of strips of land outside the highway right-of-way for which other Federal funds are authorized. However, when junkyard screening is a secondary and incidental part of an overall landscape or roadside development project, within the highway right-of-way, the overall project may include the screening work and be financed with section 319(a) Federal-aid funds.

(b) Section 319(b), Federal Funds:

(1) Projects financed with section 319 (b) Federal funds will be programmed and administered in accordance with established procedures for Highway Beautification funds.

(2) Section 319(b) Federal funds may be used for acquisition of interests in or work on scenic lands adjacent to the right-of-way of a Federal-aid highway and for work on the right-of-way of Federal-aid highways where section 319(a) funds cannot feasibly be used for that work. Section 319(b) Federal funds may not be used for landscape or roadside development projects on or adjacent to the right-of-way of a toll road.

(3) Section 319(b) Federal funds may not be used for billboard control or for junkyard screening, except that junkyard screening may be a secondary or incidental part of an overall landscape or roadside development project.

§ 752.103 Abandoned vehicles.

(a) Section 319(b) Federal funds may be used to pay for costs of collecting and removing abandoned motor vehicles from the right-of-way and from private lands adjacent to Federal-aid highways for the restoration, preservation, or enhancement of scenic beauty as seen from the traveled way of the highway as a landscape or roadside development project.

(b) The State will obtain permission or sufficient legal authority to go on private land to carry out this program. Where feasible, an agreement should be made with the owner that he will not in the future place junk, or allow junk to be placed, on his land so as to create an eyesore to the traveling public. The permission or authority and the agreement may be informal.

(c) The collection of abandoned motor vehicles from within the right-of-way must be a development project and not a maintenance operation. Once a State

completes a development project for the removal of abandoned motor vehicles from within the highway right-of-way, it is obligated to continue the removal of future abandoned motor vehicles from within the development project limits.

(d) For economy and ease of administration, the collection and removal of all abandoned motor vehicles along a particular route or routes of a Federal-aid highway should be submitted as one project.

§ 752.104 Location and description of scenic lands.

(a) An interest may be acquired in scenic land or water areas forming a part of or adjacent to the right-of-way of an approved Federal-aid highway. These areas may be in rural or urban locations. Acquisition of the necessary interests in and developmental work on several parcels may be combined in one project or separate projects may be used. These interests may be acquired whether or not there is, or has been, a Federal-aid project on the adjoining Federal-aid highway.

(b) The scenic areas must have intrinsic scenic beauty or other actual or potential values that will satisfy one or more of the following purposes: " * * * the restoration, preservation, and enhancement of scenic beauty adjacent to * * * [Federal-aid] highways including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities * * * adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public * * * "

§ 752.105 Landscape development and erosion control.

(a) Federal-aid highway projects for new construction or for major reconstruction of highway sections shall be located and designed to insure:

(1) That the overall facility has a pleasing appearance appropriate to its environment, and

(2) That the overall facility is provided with reasonable and practicable landscape and roadside development.

(b) Section 319(a) or 319(b) funds may be utilized in plant establishment periods and to pay for the cost of planting material supplied by garden clubs.

§ 752.106 Safety rest areas and scenic overlooks.

(a) A safety rest area is a roadside area, with parking facilities, separated

from the roadway provided for motorists to stop and rest for short periods. It may include drinking water, toilets, tables and benches, telephones, information facilities, and other facilities for travelers. A safety rest area is not intended to be used for social or civic gatherings, or for such active recreation as boating, swimming, or organized games. Access from the safety rest area to adjacent publicly owned and operated areas permitting such activities may be provided if access to those areas can only be had from the safety rest area. Adjacent public areas should provide sufficient parking facilities so that safety rest area parking facilities will not be utilized by visitors to such public areas.

(b) A scenic overlook is a roadside area provided for motorists to park their vehicles, beyond the shoulder, primarily for viewing the scenery in safety. Scenic overlooks need not provide comfort and convenience facilities except for tables and benches for meals and containers for refuse, unless the overlook is located at a point some distance from a safety rest area and there is evidence that there will be a large number of persons stopping at the overlook.

(c) Property acquired with section 319 (b) Federal funds which could have been acquired as highway right-of-way with section 319(a) Federal-aid funds may be improved with either section 319(a) or 319(b) funds, however, there will be no participation in costs of fixtures or furnishing of a caretaker's quarters. The cost of development of scenic lands that are not highway right-of-way, is not eligible for participation with section 319 (a) Federal-aid funds.

(d) Safety rest areas and scenic overlooks, where the need exists, are to be provided with comfort and convenience facilities reasonably necessary to accommodate the traveling public. The safety rest areas will include roadways for safe exit from, and reentry to, the main travel lanes of the Federal-aid highway and shall have parking areas as needed to accommodate the forecast number and types of vehicles.

[39 FR 24630, July 5, 1974, as amended at 39 FR 32031, Sept. 4, 1974]

§ 752.107 Information centers.

(a) Safety rest areas may be provided with information centers for the purpose of advising the public of places of interest and such other information as a State may consider desirable. Section

319(a) or 319(b) funds may not be used for an information center in a separate building but may be used in establishing an information area in a safety rest area comfort and convenience building.

(b) Federal participation in comfort and convenience buildings, with or without information areas, will be determined by gross building square footage. Gross building square footage is to be computed as the area within the outer walls of the building, measured to the exterior wall surface. Basement or cellar areas are to be discounted by a factor of one-half and entrance foyers, breezeway areas, etc., by a factor of one-third.

(c) Federal participation in comfort and convenience buildings with provisions for dispensing information will be limited to the maximum gross building square footage determined by totaling a basic allowance of 200 square feet plus 120 square feet for each water closet and/or urinal. Federal participation in comfort and convenience buildings without provisions for dispensing information will be limited to the maximum gross building square footage determined by totaling a basic allowance for 200 square feet plus 70 square feet for each water closet and/or urinal.

(d) When a State proposes to provide and operate a separate structure as an information center, the roadways and parking areas necessary for the information center may be constructed with either section 319(a) or 319(b) funds.

[39 FR 32031, Sept. 4, 1974]

§ 752.108 Privately operated information centers.

(a) Subject to FHWA approval of the lease or agreement, the State may permit privately-operated information centers at appropriate safety rest areas large enough to accommodate these centers.

(b) The right to operate these information centers shall be separately awarded by the State on the basis of public invitation. No Federal funds shall participate in the cost of construction or operation of these centers.

(c) The information center shall be aesthetically compatible with the safety rest area and the surrounding area. It shall have proper vehicle and pedestrian circulation, proper drainage, and meet applicable building codes.

(d) There shall be no violation of control of access, and no adverse effect on traffic in the main traveled way.

(e) The agreement between the State and the private operator shall provide:

(1) The State shall have title to the information center upon completion of construction or termination of the lease.

(2) Advertising must be limited to matters relating to and of interest to the traveling public.

(3) Equal access must be provided to all qualified advertisers at reasonable rates.

(4) Where the information center consists of a building, identification of the center operator and all advertising must be restricted to the interior of the building. Where the center is in the nature of a bulletin board or a partial enclosure, none of the advertising, including the trade name or symbol of the private operator, shall be legible from the main traveled way of the Federal-aid highway.

(5) Forty percent or more of all display area and audible communications shall be devoted free of charge to providing information to the traveling public and public service announcements.

(6) No charge may be made for goods or service, except telephone.

(7) Nondiscrimination provisions must be included in accordance with the State assurance with regard to 42 U.S.C. 2000d-2000d-5 (Civil Rights Act of 1964), to the effect that there will be no discrimination on the basis of race, color or national origin. Assurance must also be given that the private operator will not display advertising from advertisers who do not provide their services without regard to race, color or national origin.

(8) The center will be adequately maintained and be kept clean and sanitary.

(9) The State may promulgate reasonable rules and regulation on the conduct of the information center in the interests of the public.

(10) The State may terminate the lease or agreement for violation of its terms or for other good cause.

PART 753—ACQUISITION PROCEDURES FOR LANDSCAPING AND SCENIC ENHANCEMENT

Sec.

753.1 Purpose.

753.2 Applicability.

753.3 General provisions.

753.4 State organization, policies and procedures.

753.5 Rest areas, overlooks and scenic areas.

Sec.

753.6 Programming and authorizations—
landscaping and scenic enhancement.

AUTHORITY: (23 U.S.C. 819, 23 U.S.C. 815)
23 CFR 1.32, and 49 CFR 1.48.

SOURCE: 39 FR 32032, Sept. 4, 1974, unless otherwise noted.

§ 753.1 Purpose.

This part sets forth the policies and procedures relating to Federal participation in the cost of acquiring the property interests necessary for landscaping and scenic enhancement as required to implement section 319(b) of Title 23, United States Code, as revised in Title III of the Highway Beautification Act of 1965.

§ 753.2 Applicability.

The provisions of this part are applicable to all landscaping and scenic enhancement projects on the Federal-aid Primary and Interstate Systems regardless of whether Federal funds participated in the construction thereof, and to projects for landscaping and scenic enhancement on selected portions of the Federal-Aid Secondary Systems.

§ 753.3 General provisions.

(a) *Applicability of right-of-way policies and procedures.* (1) The appraisal and acquisition of property interests required for highway rights-of-way and for landscaping and scenic enhancement projects are, to a large extent, similar. The Federal-aid policies and procedures and requirements set forth in 23 CFR 710-741 will, therefore, govern except as may be specifically amended or modified herein.

(2) The term "right-of-way acquisition" and similar terms contained in 23 CFR 710-741 will be considered to mean the acquisition of real property interests required for landscaping and scenic enhancement parcels and projects.

(3) The participation of Federal funds will not be permitted in the costs of acquiring a dwelling or its related buildings through eminent domain procedures although participation may be allowed if such buildings are acquired in limited special situations through negotiations. If the State acquires a dwelling by condemnation, with or without the use of Federal funds, on a landscaping and scenic enhancement project, there will be no Federal-aid participation in any costs of the project.

(4) Where a dwelling is to be acquired, or the rights being acquired will cause a displacement of the occupants, the provisions of 23 CFR 740 are applicable.

(5) Where a business concern (including the operation of a farm) or non-profit organization is displaced, the provisions in 23 CFR 740 are applicable.

(b) *Valuations.* All valuations of real property interests will be supported by appraisals. The term "appraisal" and "appraiser" as used herein apply only to the valuation of real property interests.

(c) *Review requirements.* All appraisals will be reviewed by a qualified review appraiser as required in 23 CFR 720.

(d) *Land interests to be acquired.* (1) Funds provided by section 319(b) of Title 23, United States Code, may participate only in the costs of acquisition of those real property interests or rights necessary to accomplish the purposes of the Landscaping and Scenic Enhancement provisions of the Highway Beautification Act of 1965. The Federal Highway Administration [FHWA] may reach agreement with the State on the acquisition of fee title, or permanent easements which are tantamount to fee title, for scenic overlooks, rest and recreation areas, and specific types of scenic areas such as wooded areas. Authorization for the acquisition of fee title for other beautification purposes shall only be made:

(i) On a showing by the State, on an individual parcel basis, that such acquisition is in the public interest and the FHWA concurs; or

(ii) When the State agrees on a statewide basis, to dispose of the interests not required, in accordance with the procedures set forth in paragraph (e) herein. Federal funds may participate in the acquisition costs less the proportionate amount credited from the subsequent sale after disposal has been accomplished.

(2) Where the State (i) determines to acquire real property interests in excess of those necessary to accomplish the intent of the landscaping and scenic enhancement provisions of the Highway Beautification Act of 1965 or (ii) where State law does not permit the acquisition of less than full title or disposition of partial interests as shown above, Federal participation will be limited to the appraised value of the real property interests in the parcel that the FHWA determines is necessary to accomplish the intent of the landscaping and scenic en-

hancement provisions of the Highway Beautification Act.

(e) *Disposal of land interests.* (1) Where real property interests are acquired which need not be retained, the State may dispose of such interests within two years after acquisition or within two years after the highway is open to traffic, whichever is the later date, it shall be considered that disposal has been accomplished when the State has sold or attempted to sell under approved disposal procedures which will tend to secure the greatest net credit or smallest net loss to the project.

(2) When the State does not dispose of these property interests within the prescribed time period, Federal participation in the acquisition costs will be limited as shown in paragraph (d) (2) above.

(3) Any land areas or rights and interests in those areas in which Federal funds participated may be disposed of or relinquished by the highway department with the approval of the Federal Highway Administrator upon the showing that the disposal or relinquishment of the interests is in the public interest or that retention of the interests is no longer necessary to carry out the purposes of the Highway Beautification Act. Appropriate credit shall be made to Federal funds from the proceeds realized from the said disposal or relinquishment if for other than highway purposes.

(f) *Concurrent beautification and right-of-way projects.* (1) It is expected that each State will schedule its highway right-of-way and beautification project activities in such a manner as to produce the greatest efficiency and economy of operation consonant with the requirements of each program. The FHWA may withhold approval of authority to proceed on any project where it has reason to believe that concurrent operations would be substantially more economical regardless of funding, or otherwise in the public interest.

(2) The following criteria will govern the division of Federal-aid funds on concurrent projects:

(i) Where there is to be an acquisition of the whole property for right-of-way, right-of-way funds will be utilized for the acquisition and removal of property, real or personal, in accordance with 23 CFR 710-741.

(ii) When the same title in land is being acquired for the highway right-of-

way and for landscaping and scenic enhancement purposes, the acquisition costs will be prorated to each fund in proportion to the land area required for each purpose. The costs of real property improvements will be charged in accordance with the purpose for which the land on which the improvements are located is being acquired.

(iii) Where land interests needed for landscaping and scenic enhancement projects differ from those required for the highway right-of-way, the cost of the acquisition of the landscaping and scenic enhancement interests will be charged to beautification funds. The "after" value of the right-of-way appraisal will be the "before" value of the property on which all or a portion of the rights are needed for the landscaping and scenic enhancement project.

(iv) Moving costs for personal property, other than household goods, unless entirely within the right-of-way, will be charged to beautification funds.

(g) *Reimbursement requirements.* The provisions for progress and final billings as contained in 23 CFR 710 apply to the Landscaping and Scenic Enhancement projects.

§ 753.4 State organization, policies and procedures.

The description of the State's organization, policies, and procedures provided for in the manual required by 23 CFR § 710.205 shall cover the portion of the landscaping and scenic enhancement program contained in this Part.

[39 FR 37771, Oct. 24, 1974]

§ 753.5 Rest areas, overlooks and scenic areas.

(a) *General.* (1) Highway Beautification Act funds may be utilized to reimburse the State for the entire cost of acquisition of the necessary interests in strips of land adjacent to highway rights-of-way for the restoration, preservation and enhancement of scenic beauty. Such costs will be supported by appraisals.

(2) The acquisition of lands for safety rest and recreation areas and scenic overlooks is eligible for participation by either Beautification Act funds or regular highway funds as provided in 23 CFR 752.

(3) If lands for which a scenic area is programmed were purchased by the

State as excess lands at the time of acquisition of the right-of-way, Federal participation under section 319(b) may be allowed under the following plan:

(i) If the final voucher has not been paid on the project, Federal participation would be limited to the difference, if any, between the original cost of the excess tract (such cost having been supported at the time of acquisition by acceptable appraisals) and the sale price of the property subject to the restrictive covenants as necessary to insure the development and maintenance of the scenic areas.

(ii) Advertisement and public sale to be conducted in accordance with normal State procedures.

(iii) If the sale of the property, subject to the restrictive covenants for scenic enhancement, does not show a loss of State highway funds there would be no Federal participation involved.

(iv) If it is deemed advisable for the proper protection and maintenance of the scenic area for the State to retain its original interest in the land, the Federal participation would be limited to the State's original cost as supported by appraisals at the time of acquisition. If only a portion of the excess area is needed for scenic enhancement, an area proration of the total cost of the excess only is considered a reasonable measure for establishing the amount to be charged to the beautification project.

(4) Where a scenic area has been acquired in fee and Federal funds have participated in the cost of only the necessary restrictive easement, the State may sell or lease the unneeded rights or interests. No credit to Federal funds is required. It is the State's responsibility to see that the restrictions or controls acquired or established by the State for the restoration, preservation or enhancement of a scenic strip are not violated. If the FHWA determines that the scenic restrictions or controls have been violated, it shall require the State to take the necessary corrective action or request that the amount of Federal participation in the parcel be refunded.

§ 753.6 Programming and authorizations—landscaping and scenic enhancement.

Projects for landscaping and scenic enhancement shall be programmed and authorized in accordance with the provisions in 23 CFR Part 752.

PARTS 754—764 [RESERVED]

PART 765—ARCHEOLOGICAL AND PALEONTOLOGICAL SALVAGE

Sec.

- 765.1 General policies.
- 765.2 Definitions.
- 765.3 Coordination.
- 765.4 Eligibility.
- 765.5 Programming.
- 765.6 Agreements and authorization.
- 765.7 Direct Federal projects.

AUTHORITY: 23 U.S.C. 138; 23 U.S.C. 305; 23 U.S.C. 315; 16 U.S.C. 432; 16 U.S.C. 433; 23 U.S.C. 101 et seq.; 49 CFR 1.48(b); 34 Stat. 225.

SOURCE: 39 FR 4078, Feb. 1, 1974, unless otherwise noted.

§ 765.1 General policies.

(a) This part prescribes the procedures for implementing the provisions of Title 23, U.S.C., Section 305 involving the use of Federal highway funds for archeological and paleontological salvage on Federal and Federal-aid highway projects.

(b) A principal objective is to increase the knowledge of archeological and paleontological objects through cooperation with recognized museums, universities, colleges, or other scientific or educational institutions. It is expected that objects salvaged will be permanently preserved without private gain for the inspiration and benefit of the people of the United States.

(c) It is national policy that special effort be made to preserve for public use objects, sites, or buildings of National, State or local historic significance. It is a Federal crime to appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on government lands without permission of the head of the department having jurisdiction over such lands. Several States have similar statutes.

§ 765.2 Definitions.

As used in this part:

(a) "FHWA" means the Federal Highway Administration.

(b) "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and, where appropriate, any political subdivision thereof.

(c) "State highway department" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction and operations.

(d) "Historic objects" means any archeological and paleontological objects including ruins, sites, buildings, artifacts, fossils, and objects of antiquity, having National, State or local historical or scientific significance for the inspiration and benefit of the people of the United States.

(e) "Salvage and/or salvage project" means and includes any or all of the following:

(1) "Reconnaissance survey" means any work for the location of sites of historic objects on or along proposed routes during or after the route selection stage of a highway project.

(2) "Preliminary site examination" means any work for the inspection, preliminary testing, and evaluation of known or suspected sites of historic objects to determine the necessity for salvage work.

(3) "Salvage work" means any work for the excavation, removal, and preservation of historic objects, and/or the collection of data relating thereto, and may include the preparation and issuance of a salvage work report to the participating agency limited to a description of the activities undertaken at the salvage site including the objects salvaged and the data collected.

(f) "Salvage authority" means the Federal, State or local authorities, including qualified representatives of the highway agencies, concerned with the salvage, preservation, and study of historic objects. "Salvage authority" includes institutions and organizations qualified to examine, excavate, and gather historic objects and information thereof, such as museums, universities, colleges, or other recognized scientific or educational institutions.

§ 765.3 Coordination.

(a) When it is anticipated that historic objects may be encountered during construction of a proposed highway project, the State highway department should, as early as practicable, contact the appropriate salvage authority so that arrangement can be made for the necessity reconnaissance survey and/or preliminary site examination to determine whether the highway project will damage or destroy the historic objects, and whether, from a historic standpoint, such

objects should be preserved or salvaged, or that data should be collected thereon.

(b) When a salvage authority determines that historic objects should be preserved or salvaged, or that data should be collected thereon, the State highway department should assure that suitable arrangements are made for the necessary salvage work.

(c) If unforeseen objects of possible historic significance are encountered during construction, the appropriate salvage authority should be notified immediately and suitable arrangements made as set forth in paragraphs (a) and (b) of this section.

(d) When a salvage authority advises that historic objects may be encountered during construction of a proposed highway project, the procedures set forth in paragraphs (a) and (b) of this section are to be followed.

(e) Where there are known or suspected historic objects to be encountered within the limits of a highway project, the FHWA shall satisfy itself that adequate consideration has been given and appropriate provision has been made for the protection or collection of data on objects deemed to have historical significance before authorizing construction of the highway project to proceed.

§ 765.4 Eligibility.

(a) Federal-aid highway funds may participate in the cost of salvage pursuant to the provisions of Title 23, U.S.C. § 305 and this Part in the same proportion as Federal funds are expended on the related highway project.

(b) Federal-aid highway funds may participate in such salvage costs as are clearly attributable to highway projects, including survey costs incurred in advance of construction, as are determined to be necessary to preserve historic objects which might otherwise be adversely affected by highway construction, or to avoid increased salvage costs as may otherwise be incurred during highway construction.

(c) Salvage costs may include costs of protecting and preserving historic objects during removal of the site, but shall not include the costs of shipping or otherwise removing such objects from the project site except for moving them to the nearest point at which suitable transportation or temporary storage is available.

(d) The salaries, fees, and expenses incurred by a salvage authority are eligi-

ble for reimbursement to the extent that such costs are attributable to and supported as part of the project cost.

(e) In those instances where highway construction operations result in exposing, disturbing, or otherwise adversely affecting historic objects beyond the road prism, Federal-aid funds may participate in the salvage operations beyond the road prism for such limited distance within the highway right-of-way as deemed necessary to prevent loss of historic objects or data which otherwise may occur during normal construction operations.

(f) In isolated instances, the necessity, for salvage of historic objects may arise as a result of obtaining materials from borrow pits. If the borrow pit and the historic objects are in public ownership, Federal funds may participate in salvage costs which are directly attributable to the utilization of the borrow pit unless it would be in the public interest to utilize a borrow pit in another location. In those instances where the borrow pit is commercially operated or otherwise is not in public ownership, Federal participation will depend upon a showing that the private owner has waived all claims to the historic objects and that such objects will be used for public purposes without private gain to any individual.

(g) Where the removal or relocation of buildings or other structures located wholly or partly within the right-of-way will necessitate salvage of historic objects at either the existing or the relocation site, Federal funds may participate in the costs of performing such salvage as part of the project costs. Participation in such costs at relocation sites will require a showing that it is necessary to relocate the buildings or structures at that particular site. Participation will also be dependent upon a showing that the salvaged objects will be used for public purposes without private gain to any individual.

§ 765.5 Programming.

Salvage projects should preferably be handled ahead of regular construction contracts. These projects may be programmed as separate projects or as separate line items of related highway projects, and, if appropriate, are eligible for Federal participation as preliminary engineering, right-of-way, or actual construction costs. Reconnaissance survey work or preliminary site examination may also be eligible for highway plan-

ning and research funds prior to route location selection upon approval of the FHWA.

§ 765.6 Agreements and authorization.

(a) The State and the salvage authority shall agree in writing on their separate responsibilities for financing and accomplishing the salvage project. Individual agreements shall be used on a case-by-case or project basis, and shall set forth: (1) The scope, description, and location of the work to be undertaken, and (2) where applicable, the terms and amounts of any funds, other than public highway funds, made available to the State for financing the salvage project.

(b) The agreement shall be supported by plans and estimates of the work agreed upon, which shall be sufficiently informative and complete to provide the State and the FHWA with a clear showing of work required.

(1) The plans shall indicate the location of the salvage project in relation to the latest available information on the highway alignment and grade, right-of-way lines and, where applicable, access control lines; and

(2) The estimate shall set forth the items of work to be performed, broken down as to estimated cost of labor, overhead, materials and supplies, handling charges, transportation, and equipment.

(c) Where the salvage project involves work that is not attributable to the highway project, the written agreement shall state the share of the total costs to be charged to the highway project. Reimbursement shall follow the basis of cost allocation set out in the agreement, except where adjustment is required by changes between the work planned and accomplished.

(d) The FHWA shall approve the written agreement. Any conditions or qualifications attached to this approval shall be set out by letter to the State. Such approval and any conditions or qualifications attached to his approval are for the purpose of informing the State of the extent that Federal funds are eligible to participate in the costs incurred under the approved agreement, subject to the provisions of this part.

(e) In the event there are changes in the scope of work, extra work, or major changes in the planned work covered by the approved agreement, plans and estimates, reimbursement therefor shall be limited to costs covered by a modification of the agreement, or a written

change or extra work order, approved by the State and the FHWA.

(f) If a contractor's operations are delayed because of a salvage project, such contractor may be given an appropriate extension of the contract time. If practicable, the operations should be rescheduled to avoid the section until the removal of the historic objects or the gathering of historical data has been accomplished by the salvage authority.

§ 765.7 Direct Federal Projects.

The principles set forth in this part are applicable also to Federal domain projects under Federal Highway Administration supervision. Agreements may be entered into with the salvage authority to pay from Federal highway funds the reasonable costs of salvage operations. Directives or change orders may be issued to the contractors in this connection provided the specifications have not required the contractor to cover such work in his unit bid prices. They may also be issued in cases within the meaning of "subsurface or latent conditions" or "unknown physical conditions" where such terms are used in the standard contract forms.

PARTS 766—769 [RESERVED]

PART 770—AIR QUALITY GUIDELINES FOR USE IN FEDERAL-AID HIGHWAY PROGRAMS

Subpart A [Reserved]

Subpart B—Air Quality Guidelines

Sec.

770.200 Purpose.

770.201 Definitions.

770.202 Policy.

770.203 Application.

770.204 Urban Transportation Plans and Programs.

770.205 Highway sections.

770.206 Construction of highways.

AUTHORITY: 23 U.S.C. 109(h), 23 U.S.C. 109(j), 42 U.S.C. 4332, 23 U.S.C. 315, 49 CFR 1.48(b).

SOURCE: 39 FR 44441, Dec. 24, 1974, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Air Quality Guidelines

§ 770.200 Purpose.

To issue policy and procedures covering air quality guidelines for use in planning, location, and construction of highway improvements pursuant to 23 U.S.C.

§ 770.201 Definitions.

(a) *Action.* The construction or reconstruction, including associated activities, of a highway section.

(b) *Air quality control region.* An Interstate or intrastate area designated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 1857. (Section 107 of the Clean Air Act of 1970.)

(c) *Air pollution control agency.* The State, local, or multistate agency as defined by 42 U.S.C. 1857. (Section 302(b) of the Clean Air Act of 1970.)

(d) *Environmental impact statement (EIS).* A detailed statement prepared in response to 42 U.S.C. 4332. (Section 102(2)(c) of the National Environmental Policy Act of 1969.)

(e) *Highway agency.* The agency with the primary responsibility for initiating and carrying forward the action. For highway sections financed with Federal-aid highway funds, the highway agency will normally be the appropriate State, county, or city highway agency. For highways financed with other funds, such as forest highways, park roads, etc., the highway agency will be the appropriate Federal or State agency with the primary responsibility for initiating and carrying forward the action.

(f) *Highway section.* A highway development proposal between logical termini (population centers, major traffic generators, major crossroads, etc.) as normally included in a location study or multiyear highway improvement program.

(g) *Indirect source review agency.* The agency designated in an applicable State implementation plan to meet the requirements of 40 CFR 51.18 (38 FR 15834, June 18, 1973).

(h) *National Ambient Air Quality Standards.* The National Ambient Air Quality Standards established pursuant to 42 U.S.C. 1857 (Section 109 of the Clean Air Act of 1970).

(i) *Negative declaration.* A document supporting a determination that a proposed major action will not have a significant impact upon the quality of the human environment of a magnitude to require the processing of an EIS.

(j) *Policy Board (Policy Committee, Coordinating Committee, etc.).* That group of local officials, individuals or representatives of agencies or organizations which has been designated by the State to provide policy guidance and di-

rection in the conduct of the urban transportation planning process in an urbanized area.

(k) *Urban transportation planning process (3C planning process)*. The continuing, comprehensive, and cooperative planning process established pursuant to 23 U.S.C. 134.

(l) *State implementation plan (SIP)*. The plan required by 42 U.S.C. 1857 (Section 110 of the Clean Air Act of 1970) to attain and maintain a national ambient air quality standard. For the purpose of this directive, an approved SIP is the implementation plan, or most recent revision thereof, which has been approved or promulgated by the Environmental Protection Agency under section 110 of the Clean Air Act.

(m) *Urban transportation plans and programs*. Proposed area-wide plans and proposed capital improvement programs developed through the urban transportation planning process.

§ 770.202 Policy.

It is the policy of the Federal Highway Administration (FHWA) that highway agencies responsible for the planning, location, and construction of highways pursuant to 23 U.S.C. consult with the local, State, and Federal air pollution control agencies, as appropriate, and assure that decisions on highways are consistent with approved State implementation plans and that adequate consideration is given to preservation and enhancement of air quality.

§ 770.203 Application.

Land use, air quality, and transportation planning are interdependent. It is, therefore, essential that planning activities be closely coordinated in the conceptual stages and throughout the highway development process. The highway agency shall follow the appropriate procedures outlined in § 770.204 through § 770.206 in order to assure that the planning, location, and construction of highways are consistent with the approved State implementation plan for attainment and maintenance of air quality standards.

(a) The continuing review procedure described in § 770.204 shall be a requirement for each transportation planning process established pursuant to 23 U.S.C. 134.

(b) The procedures for consideration of air quality described in § 770.205 shall

apply to the processing of Federal-aid highway proposals.

(c) The procedures described in § 770.206 shall apply to the consideration of construction specifications as related to air quality.

§ 770.204 Urban Transportation Plans and Programs.

(a) To assure that land use and transportation planning conducted pursuant to 23 U.S.C. 134 and air quality planning conducted pursuant to 42 U.S.C. 1857 and the transportation plans resulting therefrom are coordinated, the responsible highway agency in cooperation with each 3C planning agency shall establish a continuing review procedure with the air pollution control agency to:

(1) Assess the consistency of the transportation plan and program with the approved State implementation plan;

(2) Solicit comments annually from the air pollution control agency including its assessment of the consistency of the transportation plan and program with the approved State implementation plan prior to transportation plan approval by the policy board; and

(3) Identify and attempt to resolve differences with the air pollution control agency.

(b) The highway agency shall request the policy board to annually determine the consistency of the current transportation plan and program with the approved State implementation plan. The highway agency shall furnish FHWA a record of this determination along with any written comments received from the air pollution control agency and the policy board's disposition of these comments.

(c) The Regional Federal Highway Administrator, in consultation with the Regional Administrator of the Environmental Protection Agency, shall annually:

(1) Assess the degree of coordination in the planning process between planning for transportation and air quality planning; and

(2) Review the determination on consistency between the transportation plan and program and the approved State implementation plan.

(d) Any deficiencies shall be cited to the highway agency. Significant deficiencies (including major instances of inconsistency) shall be considered by the Regional Federal Highway Administra-

tor as grounds for withholding planning certification.

§ 770.205 Highway sections.

(a) The following procedures shall apply to highway sections for which both the draft and the final environmental impact statement are submitted to FHWA or for which a negative declaration is considered by FHWA after the effective date of this directive:

(1) The studies and coordination activities related to the construction or reconstruction of a highway section shall include an appropriate consideration of air quality. The level of this consideration and/or the air quality analysis is to be determined on the basis of the nature and location of the highway section, anticipated traffic volume, existing air quality problems, sensitivity of nearby receptors to air pollution, and meteorological conditions. It is anticipated that lower volume facilities in areas without critical air quality problems can be satisfactorily analyzed using simplified analysis techniques and that on-site measurements will not be required. High volume facilities in areas with critical air quality problems will usually require on-site data gathering and a high level of analysis.

(2) For highway sections where a negative declaration rather than an EIS is to be prepared, the negative declaration shall briefly outline the air quality considerations involved in the development of the highway proposal. For highway sections subject to the requirements of 40 CFR 51.18, "Review of New Sources and Modifications," the negative declaration shall also include a record of required coordination with the indirect source review agency. The FHWA Division Engineer shall review the air quality information in the negative declaration for adequacy. FHWA adoption of the negative declaration shall constitute the FHWA determination that the highway is considered to be consistent with the approved State implementation plan.

(3) For highway sections on which a draft EIS is prepared, the draft shall contain:

(i) An identification of the air quality impact of the highway section;

(ii) An identification of the analysis methodology utilized;

(iii) A brief summary of the early consultation with the air pollution control agency and, where applicable, a brief summary of consultation with the indirect source review agency;

(iv) Any comments received from the air pollution control agency and, where applicable, any comments received from the indirect source review agency; and

(v) The highway agency's determination on the consistency of each alternative under consideration with the approved State implementation plan.

(4) Where required by 40 CFR 51.18, the preferred alternative shall be submitted to the indirect source review agency for review. The proposed final EIS shall not be submitted to the FHWA Regional Administrator for adoption if the indirect source review agency has found as a part of the procedures established pursuant to 40 CFR 51.18 that the highway section will result in a violation of applicable portions of the control strategy or will interfere with the attainment or maintenance of the National Ambient Air Quality Standards.

(5) The final EIS may be adopted by the FHWA only after FHWA has determined that the proposed highway section is consistent with the approved State implementation plan. The determination on consistency shall be made by the Regional Federal Highway Administrator.

(6) In making his determination, the Regional Federal Highway Administrator shall consider the following:

(i) The adequacy and the conclusions of the air quality analysis;

(ii) The comments received from the air pollution control agency resulting from the requirements of § 770.204(a) (2) and § 770.205(a) (3) (where issues raised by the air pollution control agency have not been resolved by the highway agency or the FHWA Division Engineer prior to submission of the proposed final EIS to the FHWA, the Regional Administrator shall not make a positive determination on consistency without first consulting with the EPA Regional Administrator); and

(iii) Comments received from other agencies as part of the EIS procedure and the disposition of these comments.

(7) The Regional Federal Highway Administrator shall furnish the results of any consultation with the EPA Regional Administrator on the final EIS and the FHWA determination on consistency in the transmitted information for those final environmental impact statements which require review by FHWA Headquarters.

(b) The following procedures shall apply to highway sections for which the

draft environmental impact statement was submitted to the FHWA prior to the effective date of this directive and for which the final environmental impact statement is submitted to FHWA after the effective date of this directive:

(1) Prior to the processing of the final EIS, the highway agency, in consultation with the FHWA Division Engineer, shall review available material on the development of the highway section, including the draft EIS, and shall make a written determination on the adequacy of the consideration of air quality for the highway section.

(2) If the determination concludes that the consideration of air quality is adequate, the final EIS may be processed following established EIS processing procedures.

(3) If the determination concludes that additional information and/or analysis are necessary, a revised draft or supplement shall then be furnished to appropriate local, State, and Federal agencies with expertise in air quality. At least forty-five days shall be allowed for comment by interested agencies.

(4) Comments received shall be incorporated and addressed in the final EIS as required in Volume 7, Chapter 7, section 2 of the Federal-Aid Highway Program Manual,¹ "Environmental Impact and Related Statements."

(5) Where required by 40 CFR 51.18 the preferred alternative shall be submitted to the indirect source review agency for review. The proposed final EIS shall not be submitted to the FHWA Regional Administrator for adoption if the indirect source review agency has found as part of the procedures established pursuant to 40 CFR 51.18 that the highway section will result in a violation of applicable portions of the control strategy or will interfere with the attainment or maintenance of the National Ambient Air Quality Standards.

(6) Where issues raised by the air pollution control agency have not been resolved by the highway agency or the FHWA Division Engineer prior to submission of the proposed final EIS to the FHWA, the FHWA Regional Administrator shall not make a positive determination on consistency without first consulting with the EPA Regional Administrator.

(7) Adoption of the final EIS by the FHWA shall constitute the FHWA determination that the highway section is considered to be consistent with the approved State implementation plan.

(c) The following procedures shall apply to highway sections for which the final environmental impact statement is submitted to FHWA not later than the effective date of this directive, for which a substantial amount of the grade and drain work remains to be advertised for bids, and for which a decision on the consistency of the highway section with the approved State implementation plan has not been made by the Regional Federal Highway Administrator.

(1) The highway agency shall review the information available on the development of the highway section, including the final EIS, and shall prepare a report for the FHWA on the consistency of the proposed action with the approved State implementation plan.

(i) If the highway agency or the FHWA Division Engineer concludes that additional information and/or analysis are necessary to make a determination on consistency, the highway agency shall develop such information or perform such analysis before making the report.

(ii) If the information on the development of the highway section or the air quality analysis indicates that implementation of the proposed action will result in a significant air quality impact, the highway agency shall solicit comments from and consult with the air pollution control agency. In such cases, the report shall set forth the anticipated air quality effects of the proposal, a brief summary of coordination with the air pollution control agency, including comments received and a discussion of substantial unresolved air quality issues, if any.

(2) The FHWA Division Engineer may concur in such reports, except those which include an inconsistency finding by the air pollution control agency. Concurrence in the report by the FHWA Division Engineer shall constitute the FHWA determination that the highway section is considered to be consistent with the approved State implementation plan.

(3) Reports containing an inconsistency finding shall be forwarded to the FHWA Regional Administrator. Before concurring in proposed highway section approvals, the FHWA Regional Administrator shall consult with the EPA Re-

¹ The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7, App. D.

gional Administrator for the purpose of reviewing the air quality information and consistency determination presented in the report.

(4) Concurrence in proposed highway section approvals by the FHWA Regional Administrator shall constitute the FHWA determination that the highway section is considered to be consistent with the approved State implementation plan.

(5) The FHWA Regional Administrator may request preparation and processing of a revised or supplemental EIS for the highway section where, in his judgement, the air quality issues raised are of such magnitude as to make the processing in this form necessary. The revised or supplemental EIS shall be processed in accordance with procedures contained in Volume 7, Chapter 7, Section 2 of the Federal-Aid Highway Program Manual, "Environmental Impact and Related Statements."

(d) Advancement of highway sections may continue under the provisions of 23 U.S.C. where the Regional Federal Highway Administrator has made a consistency determination in accordance with the interim regulations (23 CFR 770, 38 FR 31677) or where a substantial amount of the grade and drain work has been authorized prior to the effective date of this directive.

§ 770.206 Construction of highways.

(a) The highway agency shall take steps to assure that its current specifications, and any revisions thereof and the use of specific equipment and/or materials associated with construction are consistent with the approved State implementation plan. This shall be accomplished in coordination with the air pollution control agency.

(b) The highway agency shall establish procedures in order that any changes in the State implementation plan will be reviewed to determine if revisions to the construction specifications will be necessary.

(c) Revisions to the construction specifications resulting from the above requirements shall be made in consultation with FHWA.

PART 771—ENVIRONMENTAL IMPACT AND RELATED STATEMENTS

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AUTHORITY: 42 U.S.C. 4332(2)(C), 49 U.S.C. 1653(f), 23 U.S.C. 138, 16 U.S.C. 470(f), 42 U.S.C. 1857h-7, 16 U.S.C. 662(a), 23 U.S.C. 128, 16 U.S.C. 1301, 23 U.S.C. 315, 40 CFR 1500, and 49 CFR 1.48(b).

SOURCE: 39 FR 41805, Dec. 2, 1974, unless otherwise noted.

§ 771.1 Purpose.

To promulgate guidelines and regulations for the preparation and processing of environmental impact and related statements.

§ 771.2 Policy.

It is the policy of the Federal Highway Administration that in the development of a project a systematic interdisciplinary approach be used to assess engineering considerations and beneficial and adverse social, economic, environmental, and other effects; that efforts be made in developing projects to improve the relationship between man and his environment and to preserve the natural beauty of the countryside and natural and cultural resources; that project development involve consultation with local, State and Federal agencies, and the public; that decisions be made in the best overall public interest based upon a balanced consideration of the need for fast, safe, and efficient transportation, public services, and social, economic and environmental effects, and national environmental goals.

§ 771.3 Definitions for use in this part.

(a) An "action" is the construction or reconstruction, including associated activities, of a highway section.

(b) A "major action" is an action of superior, large and considerable importance, involving substantial planning, time, resources or expenditures (§ 771.9(d) includes examples).

(c) A "Federal action (FHWA action)" is the participation with funds administered by FHWA in the construction or reconstruction, including associated activities, of all or a portion of a highway section. It also includes FHWA approvals of associated activities such as joint and multiple use permits, changes in access control, etc., which do not ordinarily involve a commitment of Federal funds.

(d) An action "significantly affecting the quality of the human environment" is an action in which the overall cumulative primary and secondary consequences significantly alter the quality of the human environment, curtail the choices of beneficial uses of the human environment, or interfere with the attainment of long-range human environmental goals (§ 771.10(e) includes examples).

(e) The "human environment" is the aggregate of all external conditions and influences (esthetic, ecological, cultural, social, economic, historical, etc.) that affect human life.

(f) The "highway agency (HA)" is the agency with primary responsibility for initiating and carrying forward the action. For highway sections financed with Federal-aid highway funds, the HA will normally be the appropriate State, county or city highway agency. For highway sections financed with other funds, such as forest highways, park roads, etc., the HA will be the appropriate Federal or State agency with the primary responsibility for initiating and carrying forward the action.

(g) A "highway section" is a highway development proposal between logical termini (population centers, major traffic generators, major crossroads, etc.) as normally included in a location study or multiyear highway improvement program.

(h) A "section 4(f) statement" is a supporting document for a determination required by section 4(f) of the Department of Transportation Act, as amended, 49 U.S.C. 1653(f) and 23 U.S.C. 138.

(i) A "draft environmental impact statement (draft EIS)" is a document which contains an assessment of the significant effects a major action will

have upon the quality of the human environment.

(j) A "final environmental impact statement (final EIS)" is the detailed statement on a major action which significantly affects the quality of the human environment, as required by section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (2)(C). It contains the same supporting information required in the draft EIS with appropriate revisions to reflect comments received from circulation of the draft EIS and the public hearing process.

(k) A "negative declaration" is a document supporting a determination that a proposed major action will not have a significant impact upon the quality of the human environment of a magnitude to require the processing of an EIS.

§ 771.4 Application.

(a) The provisions of this part should apply to each major action which is an FHWA action, including those being implemented under "Certification Acceptance" approved pursuant to 23 U.S.C. 117, except as set forth in paragraphs (b), (c), and (d) of this section.

(b) The provisions of this part do not apply to or in any way affect or alter decisions, approvals, or authorizations which were given by the FHWA pursuant to directives then in effect nor do they apply or in any way affect final EIS's submitted to the Council on Environmental Quality (CEQ) or negative declarations which have been adopted by the FHWA Division Engineer as of the effective date of this part.

(c) The provisions of this part do not apply to project authorizations or approvals where major grade and drain items have been authorized prior to the effective date of this part based on the environmental reassessment procedure established by either paragraphs 5b and 5c of former Policy and Procedure Memorandum 90-1, dated September 7, 1972, 37 FR 21809, or the National Wildlife Federation consent judgment, 38 FR 20359.

(d) The provisions of this part apply only to those actions over which the FHWA exercises sufficient control and responsibility to alter the development being planned.

§ 771.5 Highway section processing.

(a) A highway section should be as long as practicable to permit consideration of environmental matters on a

broad scope and meaningful evaluation of alternatives. A highway section may include, when appropriate, completed as well as uncompleted portions of the highway and one or more future highway projects. Piecemealing proposed highway improvements in separate EIS's is to be avoided. The highway section identified in the EIS or negative declaration should include the total length of highway between logical termini even though only a short length of the total identified highway section is proposed for construction or reconstruction within the multi-year work program. The EIS or negative declaration should clearly identify the length or segment of the total highway section that is proposed for improvement and furnish any available information concerning long-range possibilities for future improvements within the highway section. Environmental impacts identified and discussed in the EIS will ordinarily be those anticipated to be precipitated by the proposed construction, but will also, as pertinent, include impacts associated with the total highway section. For instance, completing a gap in a highway may substantially increase traffic volumes, change traffic patterns or improve access to an area creating a need to include a discussion of impacts related to the entire highway section.

(b) In the development of the highway section, the negative declaration or EIS and section 4(f) statements and required processing under 16 U.S.C. 470(f) shall be completed during the location stage, prior to the selection of a particular location; except for those highway sections to which this part applies that had received location approval prior to the effective date of this part.

(c) When public hearing opportunities are to be afforded, the draft negative declaration or draft EIS shall be prepared prior to the first public hearing, or hearing opportunity on the location of the highway section, and the negative declaration or EIS finalized after the public hearing.

(d) The HA shall furnish the FHWA Division Engineer with a transcript of the hearing, if held, and the certifications required by 23 U.S.C. 128 prior to or with the final EIS or final negative declaration.

(e) For major actions the HA shall not proceed with the design of the proposed alternative (other than such design work necessary to make engineering and environmental decisions), right-

of-way acquisition (other than bona fide hardship cases and protective buying), or construction until notified in writing by the FHWA that: (1) the negative declaration has been adopted, or (2) at least 90 days have elapsed since the draft EIS was circulated for comment and furnished to CEQ, and at least 30 days have elapsed since the final EIS was made available to CEQ, commenting agencies and the public.

(f) For those HA's operating under an approved Action Plan which contains adequate public hearing procedures the notification noted in paragraph (e) of this section is considered the FHWA acceptance of the public hearing transcript and certifications required by 23 U.S.C. 128 when these have been submitted to FHWA. Such notification is also considered FHWA acceptance of the general location of the highway section.

(g) For those non-major actions which require a public hearing opportunity, but do not require either an EIS or negative declaration, the HA shall not proceed with those activities noted in paragraph (e) of this section until notified by FHWA that the appropriate reports, transcripts and certifications required by 23 U.S.C. 128 have been received and accepted. Such notification is also considered FHWA acceptance of the general location of the highway section.

§ 771.6 Lead agency.

When more than one Federal agency directly sponsors an action, or is directly involved in an action through funding, licenses, or permits, or is involved in a group of actions directly related because of functional interdependence and geographical proximity, consideration should be given to preparing one statement for all the actions involved. Agencies in such cases should consider the designation of a single "lead agency" to assume supervisory responsibility for preparation of a joint statement. Where a lead agency prepares the statement, the other agencies involved should be consulted early regarding plans for preparing the draft EIS and requested to provide assistance with respect to their areas of jurisdiction and expertise. The statement should contain an evaluation of the full range of all actions involved, and should reflect the views of all participating agencies. It also should be prepared before any major or irreversible actions have been taken by any of the participating agencies. Some relevant

factors in determining an appropriate lead agency are: land ownership, the time sequence in which the agencies become involved, the magnitude of their respective involvement, and their expertise with respect to the project's environmental effects.

§ 771.7 Use of consultants.

(a) Consultants may be utilized in preparing all types of environmental studies and reports. The responsibility for formulating all conclusions and determinations involved in the environmental decisions shall remain with the HA and FHWA.

(b) Work by consultants on environmental studies and reports leading to a project decision should be carefully reviewed to insure that complete and objective consideration is given to all relevant project impacts and alternatives. This is particularly important when the same consultants may be involved in subsequent phases of the highway section development.

§ 771.8 Highway section development and coordination.

(a) The regulations on Process Guidelines (23 CFR Part 795) call on each HA to develop an Action Plan to assure that adequate consideration is given to possible social, economic and environmental effects of proposed Federal-aid highway projects and that the decision on such projects are made in the best overall public interest. Each Action Plan is to describe the organization to be utilized and the process to be followed in the development of Federal-aid highway projects, including: (1) The identification of social, economic and environmental effects.

(2) Consideration of alternative courses of action.

(3) Involvement of other agencies and the public.

(4) Utilization of a systematic interdisciplinary approach.

(b) The environmental effects identified during the development and coordination of the proposal in accordance with the Action Plan will assist the HA and FHWA in making a decision on the type of environmental processing (EIS or negative declaration) to be followed on the project.

(c) Initial coordination with appropriate local, State and Federal agencies should be accomplished during the early stages to assist in identifying natural and cultural areas of significance and agency

concerns. Existing procedures, including those established under the revised Office of Management and Budget (OMB) Circular A-95, shall be used to the greatest extent practicable to accomplish this early coordination.

(d) The identification and evaluation of potential social, economic and environmental effects of the highway section and identification of possible measures to minimize harm should be initiated early in the highway studies and considered along with engineering and safety factors throughout the development of the highway section.

(e) The HA and FHWA should identify and evaluate alternative measures to reduce or eliminate adverse impacts during the development and coordination phase of the highway studies. The level of identification and consideration should be consistent with the stage and depth of the study and other factors being evaluated.

§ 771.9 Major and non-major actions.

(a) Section 102(2)(C) of the National Environmental Policy Act (NEPA) applies only to "Federal" actions which are "major."¹

(b) The HA, after consultation with the FHWA Division Engineer, shall recommend the classification of the action (major/non-major) for those highway sections for which participation with Federal-aid highway funds is anticipated. The FHWA Division Engineer, after a review of the recommendations and supporting data, may concur in the HA's determination or return it for additional information and consideration.

(c) A major action which is an FHWA action will require either an EIS or negative declaration. A non-major action which is an FHWA action will not require an EIS or a negative declaration.

(d) Major actions are those of superior, large and considerable importance involving substantial planning, time, resources or expenditures. Any action that is likely to precipitate significant foreseeable alterations in land use; planned growth; development patterns; traffic volumes; travel patterns; transportation services, including public transportation; and natural and manmade resources would be considered a major action. The

¹ Council on Environmental Quality, Guidelines for Preparation of Environmental Impact Statements, 40 CFR 1500.6(c), 38 FR 20550.

following are examples of types of actions which are ordinarily considered to be major actions:

- (1) A new freeway or expressway.
- (2) A highway which provides new access to an area and is likely to precipitate significant changes in land use or development patterns.
- (3) A new or reconstructed arterial highway which provides substantially improved access to an area and is likely to precipitate significant changes in land use or development patterns.
- (4) A new circumferential or belt highway which bypasses a community.
- (5) A highway which provides new access to areas containing significant amounts of exploitable natural resources.
- (6) Added interchanges to a completed freeway or expressway which provide new or substantially improved access to an area and are likely to precipitate significant changes in land use or development patterns.
- (7) A project that warrants a "major action" classification because it has been given national recognition by Congress even though it is not included in the above list. Such a project would be one that falls under section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act.

(e) The following are examples of types of actions which are ordinarily considered to be non-major actions:

- (1) Construction of a new rural two-lane highway which does not provide new access to an area and which would not be likely to precipitate significant changes in land use or development patterns.
- (2) Modernization of an existing highway by resurfacing, widening less than a single lane width, adding shoulders, adding auxiliary lanes for localized purposes (weaving, climbing, speed changes, etc.), and correcting substandard curves and intersections.
- (3) Lighting, signing, pavement marking, signalization, freeway surveillance and control systems, and railroad protective devices.
- (4) Safety projects such as grooving, glare screen, safety barriers, energy attenuators, etc.
- (5) Reconstruction of existing crossroad or railroad separations and existing stream crossings.
- (6) Highway landscaping and rest area projects.

(7) Construction of bus shelters and bays.

(8) Alterations to existing buildings to provide for noise attenuation and installation of noise barriers.

(9) Temporary replacement of a highway facility which is commenced immediately after the occurrence of a natural disaster or catastrophic failure to restore the highway for the health, welfare, and safety of the public.

(10) Approval of utility installations along or across a highway or approval of grade separated crossings of highways by railroads or highways.

(11) Approval of the Annual Highway Safety Work Program involving the highway-related safety standards pursuant to 23 U.S.C. 402.

(f) There will be highway sections which are not readily classified as major or non-major actions. There will also be those highway sections which may normally be classified as non-major actions, but for which the FHWA Division Engineer may feel special consideration is appropriate. For such highway sections, the FHWA Division Engineer may, when deemed appropriate, classify them as major actions or use the following procedure to assist in the major or non-major determination.

(1) At the request of the FHWA Division Engineer, the HA shall publish a notice in the local newspaper(s) and a newspaper in the State capitol inviting the public to submit comments to the FHWA Division Engineer for his use in making a major/non-major action determination. The notice shall:

- (i) allow a minimum of 30 days for comment.
- (ii) Furnish a description of the proposed action.
- (iii) Furnish the name and address of the person or office responsible for supplying information about the proposed action and the FHWA Division Engineer's name and address where comments are to be sent.

(iv) Indicate that the FHWA Division Engineer will be evaluating the significance of the anticipated changes in land use; planned growth; development patterns; traffic volumes; travel patterns; transportation service, including public transportation; and natural and manmade resources.

(v) Indicate that the public will be advised of the decision by subsequent notice in the same newspapers.

(2) The FHWA Division Engineer shall make a written determination based upon all available information, including comments received from the public.

(3) The HA shall publish the FHWA Division Engineer's determination as soon as practical in the same newspapers as the original notice.

§ 771.10 Significant effect determination.

(a) Section 102(2)(C) of the NEPA requires preparation and processing of an environmental impact statement for major Federal actions "significantly affecting the quality of the human environment." For a highway section which is determined to be a major FHWA action, the HA, after consultation with the FHWA Division Engineer, shall make a recommendation on the significance of the action on the quality of the human environment and recommend the processing procedure (EIS or negative declaration). In evaluating the significance, the changes which may be caused by the action and the importance and scale of those changes are to be considered. The FHWA Division Engineer, after review of the recommendation and supporting data, shall concur in the recommendation or return it to the HA for additional supporting information and consideration.

(b) The information developed during the highway section studies, other available information and the consultation and coordination with the public and governmental agencies shall be the basis for determining the need for an EIS.

(c) An EIS is required for major Federal actions which are anticipated to have a significant effect on the quality of the human environment.

(d) A negative declaration is required for all major Federal actions for which an EIS is not prepared.

(e) The following are examples of types of actions which ordinarily have a significant effect on the quality of the human environment.

(1) An action that has more than minimal effect on properties protected under section 4(f) of the DOT Act or section 106 of the Historic Preservation Act.

(2) An action that is likely to be highly controversial on environmental grounds or with respect to the availability of adequate relocation housing.

(3) An action that is likely to have a significantly adverse impact on natural, ecological, cultural or scenic resources of national, State or local significance.

(4) An action that (i) causes significant division or disruption of an established community or disrupts orderly, planned development, or is determined to be significantly inconsistent with plans or goals that have been adopted by the community in which the project is located, as determined by a responsible official(s); or (ii) causes a significant increase in traffic congestion.

(5) An action which (i) is determined to be inconsistent with any Federal, State or local law or regulation relating to the environment; or (ii) has a significant detrimental impact on air or water quality or on ambient noise levels for adjoining areas; or (iii) may contaminate a public water supply system.

§ 771.11 Negative declarations.

(a) A draft negative declaration shall be prepared by the HA in consultation with FHWA for each major action which is a Federal action when the studies and coordination demonstrate that implementing the proposed action will not have a significant impact upon the quality of the human environment of a magnitude to require the processing of an EIS.

(b) A draft negative declaration is a written document which records the determination that implementing the proposed action will not have a significant effect upon the quality of the human environment. The negative declaration is to include pertinent information about the highway section such as:

(1) A description of the proposed action, need for the action, alternatives considered, and bases for the recommendation that the proposed action is not anticipated to have a significant impact upon the quality of the human environment.

(2) The social, economic, environmental and other effects considered.

(3) Map(s) showing the alternative(s).

(4) Other comparative data, such as costs, transportation requirements, engineering factors, etc.

(5) A discussion of the issues and comments received from other agencies, organizations and the public during the highway section development and coordination.

(c) A draft negative declaration need not be circulated for comment, but its public availability shall be included in the notice of the public hearing or opportunity for public hearing.

(d) When a public hearing notice is not required, the HA shall place a notice in a local newspaper(s), similar to a public hearing notice and at a similar stage of development, advising the public of the availability of a draft negative declaration and where to obtain information concerning the undertaking. Those opposing the processing of a highway section with a negative declaration or those disagreeing with the basis of the determination set forth in the draft negative declaration shall be invited to furnish written comments to the HA or the FHWA summarizing the specific, substantive and factual basis for such opposition. Such comments are to be furnished to the HA or FHWA within 30 days of the notice in the newspaper.

(e) The final negative declaration shall include a summary and disposition of the public hearing comments on the social, economic, environmental, and other effects of the proposed action, including alternatives raised at the public hearing.

(f) The FHWA Division Engineer, after a review of the final negative declaration and an examination of the social, economic and environmental issues, shall, if in agreement, indicate FHWA adoption of the determination by signing and dating.

(g) The HA and FHWA shall prepare and process a draft EIS in lieu of a negative declaration if significant impacts are identified prior to finalizing the negative declaration or at a subsequent time. It would not be necessary in such instance to hold a public hearing for the sole purpose of presenting the draft EIS. Circulation of the draft EIS affords the public and governmental agencies an opportunity to express their views on the anticipated environmental impacts should the proposed action be implemented.

(h) The negative declaration shall be reevaluated by the HA and FHWA periodically, and in all cases prior to proceeding with major project activities, for the purpose of determining whether there has been a substantial change in the social, economic and environmental effects of the proposed action. If there are substantial changes in the proposed action that would significantly affect the qual-

ity of the human environment, draft and final EIS's shall be prepared and processed in accordance with this part.

§ 771.12 Draft environmental impact statement processing.

(a) The draft EIS shall be prepared by the HA in consultation with the FHWA for major actions which are Federal actions and which significantly affect the quality of the human environment. The administrative record should include evidence of the FHWA involvement in the development of the EIS, particularly the consultations with the HA on environmental determinations, decisions or conclusions.

(b) The FHWA Division Engineer shall review the draft EIS and if in agreement with the scope and content, take responsibility for the draft EIS by signing and dating the title page before it is released for comment.

(c) The draft EIS shall be circulated by the HA on behalf of FHWA for comment and made available to the public at least 30 days before the public hearing and no later than the publication of first notice for the hearing or opportunity therefor.

(d) The FHWA Division Engineer is responsible for distributing copies of the draft EIS to the FHWA Regional Office and to the following:

(1) FHWA Washington Headquarters (Office of Environmental Policy, HEV-10)—5 copies.

(2) Council on Environmental Quality (CEQ), 722 Jackson Place, NW., Washington, D.C. 20006—5 copies.

(e) The FHWA Division Engineer should indicate in the transmittal memorandum to the Washington Headquarters Office (HEV-10) his recommendation with respect to whether the final EIS may require prior concurrence from the Washington Headquarters Office (see § 771.14(c)).

(f) Private groups and individuals, and governmental agencies which are furnished copies of the draft EIS by the HA shall be given a minimum of 45 days to review the statement and return comments. A calendar date for return of comments should be included in the letter transmitting the draft EIS for review. In establishing the calendar date (or other review period), a reasonable number of days should be added to the 45 days to allow for internal HA mail handling and for the draft EIS to reach the recipient.

(g) The Council on Environmental Quality publishes in the **FEDERAL REGISTER** each Friday a listing of all draft EIS's received Monday through Friday of the week before the publication date. The **FEDERAL REGISTER** notice will establish a 45-day period (beginning with the date of the publication in the **FEDERAL REGISTER**) for the return of comments from those not directly furnished a copy by the HA or FHWA.

(h) The HA shall circulate the draft EIS for review and comment to: Federal, State and local agencies with jurisdiction by law and special expertise with respect to any environmental impact involved; the State and area-wide clearinghouse; and the affected city or county. The Federal and Federal-State agencies and their relevant areas of expertise are identified in Appendix II of the CEQ Guidelines (40 CFR Part 1500). The clearinghouses may be used, by mutual agreement, for securing State and local agency reviews of the draft EIS and furnishing copies to the affected city or county. In some cases, the Governor may have designated a specific agency, other than the clearinghouse, for securing reviews of EIS's.

(i) The HA shall also circulate copies of the draft EIS to public and private organizations and individuals with special expertise with respect to the environmental impact involved, those which are known to have an interest in the highway section, and those who request an opportunity to comment.

(j) The transmittal letter to commenting entities shall indicate (1) the calendar date comments are due (see paragraph (f) of this section), (2) where to send comments, and (3) that the final EIS will be furnished those who request a copy at the time they comment on the draft EIS.

(k) The initial printing of the draft EIS shall be of sufficient quantity to meet requests for copies which can be reasonably expected from agencies, organizations and individuals. Copies are to be furnished free of charge unless the FHWA Division Engineer concludes that a fee which is not more than the actual printing cost should be charged. The HA shall inform the FHWA of requests for draft EIS's which it is unable to fill. The FHWA Division Engineer may ask the HA to furnish a copy of the statement free of charge or he may offer a copy of the statement at a fee which is not more

than the actual printing or reproduction cost, and at the same time direct the party to the nearest location where the party may review the statement. In making his decision, the FHWA Division Engineer will consider the following: (1) The party's need for an individual copy of the statement.

(2) The supply of statements remaining from the initial printing.

(3) The amount of time remaining before the anticipated completion of the final EIS.

(4) Any other pertinent information.

(l) The draft EIS shall be available for review by the public at the HA headquarters and appropriate field offices, and FHWA Division, Regional and Headquarters Offices, and at any public hearing. A copy(s) should also be made available, as appropriate, to public institutions such as local governments, public libraries and schools to permit them to make it available for public review.

(m) The availability of the draft EIS shall be included in the public hearing notice.

(n) Circulation of the draft EIS affords the public and governmental agencies opportunity to express their views on the anticipated environmental impact should the proposed action be implemented. Therefore, a public hearing or public meeting will not ordinarily be required for the sole purpose of presenting and receiving comments on a draft EIS. When a hearing is not held where the draft EIS may be discussed, a notice shall be placed in the newspaper similar to the public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where comments should be sent.

(o) The draft EIS shall, if necessary, be revised unless the final EIS is submitted to FHWA for adoption within 3 years from the date the draft EIS was circulated. If the draft EIS is revised, it shall also be recirculated for comment. Such recirculation shall be in the same manner as an original draft EIS.

(p) With the concurrence of the FHWA Division Engineer, a draft EIS may be changed to a negative declaration if the review process and public hearing comments indicate the anticipated environmental impacts are not considered significant. All agencies and individuals that received copies or commented on the draft statement must be

informed by the HA that a negative declaration was substituted for the draft EIS and given a brief explanation of the reason therefor.

§ 771.13 Responsibilities of commenting entities.

(a) Agencies and members of the public with expertise in any of the identified environmental impacts or who have an interest in the proposed action should submit comments on proposed actions on the basis of draft environmental statements and should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. Although the comments need not conform to any particular format, it will assist those reviewing comments if the comments are organized in a manner consistent with the structure of the draft statement. Emphasis should be placed on the assessment of the environmental impacts of the proposed action, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives to the action. Commenting entities may recommend modifications to the proposed action and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts.

(b) Comments which are received after the allotted time, but before the final EIS is forwarded to the Regional Federal Highway Administrator, are to be appended to the final EIS, where practicable, with an explanation that the comments were received later and are not evaluated in the final EIS.

§ 771.14 Final environmental impact statement processing.

(a) A final EIS shall be prepared by the HA in consultation with FHWA for major FHWA actions which significantly affect the quality of the human environment.

(b) The Regional Federal Highway Administrator shall review the final EIS, including the comments and the evaluations of comments attached thereto, before processing the statement. Appropriate members of the FHWA Regional Office staff, such as engineering, environmental design, right-of-way, civil rights, etc., should be an integral part of the review process. The final EIS shall also be reviewed for legal sufficiency by the

FHWA Chief Counsel or his designee. When the Regional Federal Highway Administrator is satisfied with the scope, content and the identification and evaluation of potential significant environmental impacts affecting the quality of human environment, the final EIS shall be processed in the manner specified by paragraphs (c) through (e) of this section.

(c) The Regional Federal Highway Administrator shall submit to the FHWA Washington Headquarters Office (HEV-10) for prior concurrence four (4) copies of the final EIS prepared for highway sections in the following categories:

(1) Highway sections on a new alignment in a metropolitan area of over 100,000 population. The metropolitan area is defined as the area designated for the purposes of section 134 transportation planning.

(2) Any new controlled access freeway.

(3) Highway sections to which a Federal, State or local governmental agency has expressed opposition on environmental grounds.

(4) Highway sections for which the Federal Highway Administrator requests the Regional Administrator to send the final EIS to the Washington Headquarters Office for review either by the Assistant Secretary for Environment, Safety and Consumer Affairs or by the FHWA Headquarters Office.

(5) Highway sections which would require a section 4(f) determination.

(d) For those final EIS's which require prior concurrence, the FHWA Washington Headquarters Office will notify the Regional Federal Highway Administrator when he may release the final EIS to the public and CEQ, at which time the Regional Federal Highway Administrator will adopt and sign the final EIS and insure that the following distribution is made:

(1) Council on Environmental Quality, 772 Jackson Place, NW., Washington, D.C. 20006—(5 copies).

(2) Regional Administrator, U.S. Environmental Protection Agency.

(3) State and area-wide clearinghouse.

(4) Agencies, organizations and individuals who made substantive comments on the draft EIS and who requested a copy of the final EIS.

(e) For those final EIS's which do not require prior concurrence, the Regional Federal Highway Administrator may adopt and sign the final EIS after the

Regional Office review is completed. He shall then insure that it is distributed to the Washington Headquarters Office (2 copies) and to those noted in paragraph (d) of this section.

(f) Copies of the final EIS should be furnished free of charge to the fullest extent practicable or at a fee which is not more than the actual printing or reproduction cost (See § 771.12(k)).

(g) In limited situations where an EIS is voluminous and the number of comments on a draft EIS is such that distribution of the final EIS to all commenting entities appears impracticable, alternative arrangements for the distribution of the statement may be considered. Where the commenting entities' interest in specific areas can be identified, the alternative arrangements may be the distribution of those sections of the EIS that deal with their specific interests or areas of concern; summaries of those sections noted above; or the response to the comment which is included in the final EIS (see § 771.18(o)(5)).

(h) The final EIS shall be available for public review at the HA headquarters and appropriate field offices, and the FHWA Washington Headquarters, Regional and Division Offices. A copy(s) should also be made available, as appropriate, to public institutions, such as local governments, public libraries and schools to permit them to make it available for public review.

(i) The final EIS shall be reevaluated by the HA and the FHWA prior to proceeding with major project activities for the purpose of determining whether there has been a substantial change in the social, economic and environmental effects of the proposed action. If there are substantial changes in the proposed action that would significantly affect the quality of the human environment, a supplemental statement shall be prepared.

§ 771.15 Supplemental statements.

A draft EIS or final EIS may be supplemented at any time. Supplements will be necessary when substantial changes are made in the proposed action that will introduce a new or changed environmental effect of significance to the quality of the human environment or significant new information becomes available concerning the action's environmental aspects. The decision to prepare and process a supplement to the final EIS shall not void or alter FHWA approval actions

given prior to the decision, or void or alter previously authorized development of the highway section not directly affected by the changed condition or new information. A supplement is to be processed in the same manner as a new EIS (draft and final).

§ 771.16 Emergency action procedures.

(a) The Council on Environmental Quality (CEQ) Guidelines, 40 CFR 1500.11(e), allow modification of requirements in a national emergency, a disaster, a catastrophic failure or similar situations of great urgency. The processing times may be reduced or, if the emergency situation warrants, preparation and processing of a statement may be abbreviated. Such procedural changes should be requested from the FHWA Washington Headquarters only for those major actions where the need for immediate action requires processing in other than a normal manner. The disruption of the area economy, social consequences or the health and safety of the public may justify immediate replacement of a damaged highway facility.

(b) When a determination has been made that a project is a major action the HA and FHWA Division Engineer should be guided by the nature of the replacement, the extent of the disturbance to the landscape, comments received from local agencies contacted, and the relationship between the critical nature of the emergency and any significant anticipated environmental impacts in judging the appropriateness of a negative declaration.

(c) The HA and FHWA Division Engineer may determine that several major actions (projects) in the damaged area qualify for a negative declaration. In such instances, they may be listed in a single negative declaration. The negative declaration should be referenced or a copy included in each project file.

§ 771.17 Maintaining lists of actions.

(a) The FHWA Division Engineer shall maintain two lists of actions on which the HA and FHWA have reached agreement on the type of environmental processing (EIS or negative declaration). One list should contain major actions significantly affecting the quality of the human environment for which draft EIS's are being prepared and the other should include major actions for which draft negative declarations are being prepared.

(b) The lists should be updated at the end of each calendar quarter and four copies forwarded to the Washington

Headquarters Office. These lists shall be prepared on 8 x 10½-inch paper and shall be headed as follows:

State _____

Type of List
(draft EIS or negative
declaration)[illegible]

(c) A change in the environmental processing from EIS to negative declaration or negative declaration to EIS shall be footnoted in the next subsequent listing. The highway section may be removed from the next listing when the draft EIS is circulated for comment, the final negative declaration has been adopted by the FHWA Division Engineer, or the action has been abandoned or cancelled.

(d) **These lists shall be available for public inspection and copying at the FHWA Washington Headquarters, Regional and Division Offices.**

§ 771.18 Content of the environmental impact statement.

(a) **General.** Every effort shall be made to convey the required information in a form easily understood by those expected to comment upon the draft EIS. Substance of the information conveyed rather than the length or detail of the statement should be stressed. Succinctness and brevity, consistent with the scale and impact of the proposed action and the information to be transmitted, should be the aim of those preparing the EIS. For example, all the sections outlined in paragraphs (g) through (m) of this section are not required if the information is adequately covered in another section.

(b) **Reports and studies.** The EIS should briefly summarize and reference in the text underlying studies, reports and other information considered in preparing the statement. Referenced reports should be those readily available to commenting entities upon request or as a minimum available for review and copying at a convenient location. If supporting documents are appended to the statement, care is to be taken to insure that the statement is self-contained

without the need for undue cross reference. The level of the summary should be commensurate with the scale of the proposed action and the impact.

(c) **Standard size.** The statements shall be printed on paper approximately $8\frac{1}{2}$ x 11 inches and the maps, drawings, illustrations, etc., should be folded for assembly to the same size. Sheets wider than $8\frac{1}{2}$ inches should be folded so as to open to the right with identification added or showing at the right edge.

(d) **Title page.** Each environmental statement (draft or final) shall have a title page headed as follows:

Report Number: -----

(Route, Termini, County, City, etc.)

ADMINISTRATIVE ACTION
DRAFT (FINAL)

ENVIRONMENTAL IMPACT STATEMENT
U.S. DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
and
(optional)

(optional)

Appropriate highway agency

Submitted pursuant to 42 U.S.C. 4332(2)(C),
23 U.S.C. 128(a) and (when applicable) 49
U.S.C. 1653(f) and 16 U.S.C. 470(f)

Date _____

Signature and title of appropriate FHWA official

(e) *Report number.* The number placed at the top left-hand corner of the title page on all draft and final environmental statements is as follows:

FHWA-AZ-EIS-74-01-D(F) (S)

FHWA—Name of Federal Agency.
AZ—Name of State (cannot exceed four characters).

74—Year draft statement was prepared.
01—Sequential number of draft statement for each calendar year.

D—designates the statement as the draft statement.

F—designates the statement as the final statement.

S—designates supplemental statement.

DS-2—designates second draft supplemental statement.

(f) *Summary.* The summary should contain the following information:

(1) Check appropriate box(es):

Federal Highway Administration Administrative Action Environmental Statement

☐ Draft

☐ Final

☐ Section 4(f) Statement attached.

(2) The names, addresses and telephone numbers of the individuals at the HA and FHWA who can be contacted for additional information concerning the proposal and statement.

(3) Brief description of the proposed FHWA action indicating route, termini, type of highway, number of lanes, length, county, city, State, etc., as appropriate. Also list other proposed Federal actions in the area, if any, which are in the statement.

(4) Summary of environmental impacts, both beneficial and adverse.

(5) Summarize major alternatives considered.

(6) List of all commenting entities from which comments are being requested (draft EIS), list of all commenting entities from which comments have been requested, and identify those that submitted comments (final EIS).

(7) For final statements, the date the draft statement was mailed to CEQ.

(g) *Description of the proposed action and alternatives considered, and the social, economic and environmental context.* This section is to include, in summary form, information such as the following listing concerning the basis for the proposed action, highway and traffic engineering factors, features to reduce or eliminate adverse environmental impacts, estimated highway costs, anticipated traffic and region benefits (traffic associated), public services, and existing significant land uses and natural and cultural features in the study area.

(1) Location, type facility and length (new and existing alignment).

(2) Traffic data and number of lanes.

(3) Predominant right-of-way width and access control (existing and proposed).

(4) Other major design features such as the general horizontal and vertical alignment and the location of interchanges, separation structures, at-grade intersections, river crossings, etc.

(5) Deficiencies of the existing facilities and the planning basis for the proposed action, including anticipated benefits to the State, region and community, and the relationship between this highway section and the total transportation requirements for the area.

(6) Anticipated safety benefits or lack thereof if project is not built.

(7) Summary of any technical, social and economic studies made during the development of the proposed action.

(8) The current status of the proposal with a brief historical résumé and an estimate of when the proposal may be constructed.

(9) A general description of the surrounding terrain.

(10) Inventory of pertinent economic factors such as employment, taxes, property value, etc.

(11) Surrounding natural and cultural features such as towns, lakes, streams, mountains, historic sites, landmarks, institutions, developed areas, principal roads and highways, and similar features that are pertinent to the study.

(12) General description of the surrounding neighborhoods including population and growth characteristics, and ethnic composition.

(13) Vicinity and detailed maps, sketches, pictures, layouts and other visual exhibits should be used to show specific involvement in order to give a layman reviewer a reasonable understanding of the impact.

(14) Public facilities and services, including religious, health and educational facilities, and public utilities, fire protection and other emergency services.

(15) Esthetic and other values, including visual quality such as: "view of the road" and the joint development and multiple use of space.

(h) *Land use planning.* This section should describe the scope and status of the planning process for the area and should discuss the relationship between the proposed action and land use and public facility plans, policies and controls as have been promulgated by the affected community. Existing and proposed land use (a map preferable) including, where applicable, other proposed Federal actions in the area affected should also be discussed. Where conflicts or inconsistencies exist, this section should describe the extent of reconciliation and the reason for proceeding notwithstanding the absence of full reconciliation.

(i) *The probable impact of the proposed action on the environment.* This section is to describe the significant beneficial and detrimental environmental consequences anticipated if the proposed action is implemented. The level of importance of environmental factors and the level of the impact will vary with the nature, scale and location of the proposed action. For example, impact on the nesting grounds of an endangered species would be significant while a similar impact on the nesting grounds of a species which is in abundance may not be significant. Likewise, the significance of a high noise level is much different in a residential area than in an industrial area.

(1) Highways may stimulate or induce other actions (secondary actions) such as more rapid land development or changed patterns of social and economic activities. Impacts associated with secondary actions, through their impacts on existing community facilities and activities, through inducing new facilities and activities or through changes in natural conditions may often be even more substantial than the primary impacts associated with construction of the highway. For instance, the effect on population and area growth associated with the construction of new highways may be among the more significant impacts. Such impacts associated with anticipated secondary actions should be assessed and discussed in this section of the EIS.

(2) Direct (primary) impacts upon the narrow band adjacent to the highway may be included when significant to the whole of the region or the community. The discussions under this section should address the probable significant impacts of the action (as opposed to individual alternative locations or designs). These might include the probable impact upon elements, factors and features listed below.

(i) *Natural, ecological or scenic resources impacts.* This section will summarize the significant effects on natural, ecological and scenic resources anticipated to be associated with the implementation of the proposed action, including a summary of consultations with the appropriate public and governmental agencies. One example of a natural resource impact would be the effect an action would have on the consumption of energy resources.

(ii) *Relocation of individuals and families impacts.* This section will briefly summarize the relocation assistance program and assess the impacts associated with significant relocation of people and businesses, including consultations with housing agencies and information on the anticipated relocation housing programs. This section will include, to the extent appropriate, information such as the following that is obtainable by visual inspection of the area and from readily available secondary sources or community sources; an estimate of households to be displaced, including the family characteristics (e.g. minorities, income levels, tenure, the elderly, large families); divisive or disruptive effect on the community, such as separation of residences from community facilities or separation of neighborhoods; impact on the neighborhood and housing where relocation is likely to take place; an estimate of the businesses to be displaced and the general effect of business dislocation on the economy of the community; a description of relocation housing in the area, and the ability to provide adequate relocation housing for the types of families to be displaced; a description of special relocation advisory services that will be necessary for identified unusual conditions; a description of the actions proposed to remedy insufficient relocation housing, including, if necessary, housing of last resort; and results of consultation with local officials, social agencies, and community groups regarding the impacts on the community affected.

(iii) *Social impacts.* This section will include a discussion of the significant social impacts anticipated to be caused by the proposed action. The following are examples of groups that may have special problems and require special consideration with respect to access to jobs, schools, churches, parks, hospitals, shopping, and community services:

- (A) elderly
- (B) school-age children
- (C) those dependent upon public transportation
- (D) handicapped
- (E) illiterate
- (F) nondrivers
- (G) pedestrians
- (H) bicyclists
- (I) low income
- (J) racial, ethnic, or religious groups
- (iv) *Air quality.*

(A) This section shall include: an identification of the air quality impact

of the highway section; and identification of the analysis methodology utilized; a brief summary of the early consultation with the air pollution control agency and, where applicable, a brief summary of any consultation with the indirect source review agency; any comments received from the air pollution control agency, and, where applicable, any comments received from the indirect source review agency; and the Highway Agency's determination on the consistency of each alternative under consideration with the approved State implementation plan.

(B) Where required by 40 CFR 51.18, the preferred alternative shall be submitted to the indirect source review agency for review. The proposed final EIS shall not be submitted to FHWA for adoption if the indirect source review agency has found, as a part of the procedures established pursuant to 40 CFR 51.18, that the highway section will result in a violation of applicable portions of the control strategy or will interfere with the attainment or maintenance of the National Ambient Air Quality Standards.

(C) The final EIS should include any comments received from the air pollution control agency concerning the consistency of the proposal with the State implementation plan.

(D) The final EIS may be adopted by the FHWA only after FHWA has determined that the proposed highway section is consistent with the approved State implementation plan. The determination on consistency shall be made by the Regional Federal Highway Administrator.

(v) *Noise impacts.* If highway-generated noise is a significant factor, this section will include a discussion of the possible noise problems and a summary of the noise analysis information. The summary should include:

(A) Information on the numbers and types of activities which may be affected.

(B) Extent of the impact (in decibels).

(C) Likelihood that noise abatement measures can reduce the noise impacts.

(D) Noise abatement measures which will likely be incorporated in the project.

(E) Noise problems for which no apparent solution is available.

(vi) *Water quality impacts.* Include in this section a discussion on significant water quality impacts, including summaries of analyses and consultations with the agency responsible for the State

water quality standards. Possible water quality impacts related to highways include: erosion and subsequent sedimentation problems; use of deicing, weed, rodent and insect control products; waste water disposal at safety roadside rest areas; spillage of poisons or chemicals by trucks into a water supply system; and contamination of surface and ground water supplies and of recharge areas by polluted fill material.

(vii) *Wetlands and coastal zones impacts.* This section will summarize the anticipated significant impacts on wetlands and coastal zones, including analyses, consultations and efforts to reduce the impact. Where applicable, the discussion should set forth any inconsistencies with wetlands or coastal zone management programs.

(viii) *Stream modification or impoundment impacts.* This section will include a summary of information which is necessary to comply with 16 U.S.C. 662(a). Briefly, 16 U.S.C. 662(a) requires consultation with the U.S. Fish and Wildlife Service and the appropriate State agency when a Federal action involves impoundment (surface area 10 acres or more), diversion channel deepening or other modification of a stream or body of water. The draft EIS is to include a summary of the early consultation.

(ix) *Flood hazard evaluation.* When an alternative under consideration significantly encroaches on a flood plain, this section will include a summary of studies and consultation made for compliance with the FHWA directive^a implementing Executive Order 11296 and Flood Hazard Evaluation Guidelines for Federal Executive Agencies, or information evidencing that such requirements can be met during project development.

(x) *Construction impacts.* In general, adverse impacts during construction will be less important than long-term impacts. However, if appropriate, the EIS should discuss significant impacts (particularly air, noise and water) associated with construction. Also, where applicable the impact of the proposed disposal method and the impact of borrow areas should be discussed.

(3) This section will also include a discussion of practicable and feasible meas-

^a Vol. 6, Ch. 7, Sec. 3, Subsec. 2 of the Federal-Aid Highway Program Manual, which is available for inspection and copying as prescribed in 49 CFR Part 7, App. D.

ures to avoid or reduce the adverse impact, and their relative cost and benefits, where appropriate. The discussion should include the full range of reasonable measures to resolve or minimize anticipated problems and the pros and cons of each.

(j) *Alternatives.* (1) This section shall include a discussion, with maps and other visual aids, as appropriate, of the reasonable alternatives studied in detail, including those that might enhance environmental quality or avoid some or all of the adverse environmental effects. Examples of such alternatives include alternate locations and designs, not implementing the proposed action, postponing the action, providing a lower level of service, providing a reduced facility (lanes/design), and an increase or decrease in public transportation.

(2) The probable beneficial and adverse effects and costs of reasonable alternatives are to be described in a manner consistent with the scale of the proposed highway improvement and significance of the impact. The discussion of environmental impacts in this section includes significant impacts associated with the alternatives themselves, as opposed to the discussion of regional environmental impacts associated with implementing the action.

(3) The draft environmental statement should indicate that all alternatives are under consideration and that a specific alternative will be selected by the HA following the public hearing. The final environmental statement will be prepared for the selected alternative.

(k) *Probable adverse environmental effects which cannot be avoided.* Unavoidable impacts such as water, noise or air pollution; damage to life systems; threats to health; undesirable land use patterns; effects on minorities, etc., will be summarized in this section. These will be adverse environmental effects identified in paragraph (i) of this section for which the use of reasonable corrective or abatement measures will not reduce the impact to acceptable levels.

(1) *The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.* This section should contain a brief discussion of the extent to which the proposed action involves trade-offs between short-term environmental gains at the expense of long-term environmental losses, or vice-

versa, and a discussion of the extent to which the proposed action forecloses future options. In this context, short-term and long-term do not refer to any fixed time period, but should be viewed in terms of the environmentally significant consequences of the proposed action. The gains (short-term and long-term) may be the benefits associated with a proposed highway to the area or region such as improved transportation, reduction of traffic congestion, improvement in air quality, reduction in noise, improved economic base, accessibility, improved development potential, etc. The losses (short- and long-term) may be the disadvantages associated with the proposed highway, such as use of land by the highway, use of land for highway-associated developments (residential and industrial), loss of parks and recreation areas, and increased pollution (air, water and noise) and impacts on open space, wetlands, etc.

(m) *Irreversible and irretrievable commitments of resources.* This requires an identification of the extent to which the irreversible adverse effects (see paragraph (k) of this section) curtail the range of potential uses of the environment. "Resources" means the full range of natural and cultural resources committed to loss or destruction by the action and is not to be interpreted to mean only the labor and materials committed to the project. A transportation facility may precipitate other related actions such as land development, exploitation of resources, travel, etc., that could induce a significant irreversible commitment which would curtail other use of the area.

(n) *The impact on properties and sites of historic and cultural significance.* (1) To determine whether the project will have an effect on properties of State or local historical, architectural, archaeological, or cultural significance, the HA should consult with the State Historic Preservation Officer (SHPO), with the local official having jurisdiction of the property, and where appropriate, with historical societies, museums, or academic institutions having expertise with regard to the property.

(2) This section of the draft EIS should contain an identification of properties included in or eligible for inclusion in the National Register and an evaluation of the effect the proposed action would have on such properties. It should also contain a record of the co-

ordination with the SHPO concerning the identification of such properties and the evaluation of effect.

(3) This section of the final EIS should also contain (a) documentation supporting a finding of no adverse effect and a record of coordination with the Executive Director, Advisory Council on Historic Preservation (ACHP), or (b) an executed Memorandum of Agreement when an adverse effect has been established, or comments from the Council after consideration of the project at a meeting of the ACHP and an account of actions to be taken in response to the comments of the ACHP.

(c) *Comments and coordination.* (1) The draft EIS shall include a summary of coordination and public and minority involvement during the development of the project and pertinent comments received during the coordination.

(2) The draft EIS shall be revised, as appropriate, to reflect the consideration given to substantive comments received. The final EIS shall include a copy of all substantive comments received (or summaries thereof where response has been exceptionally voluminous), along with a discussion of each substantive comment and suggestion. When the draft EIS is revised as a result of comments received, the copy of the comment should contain marginal references indicating the page and paragraph where revisions were made or the discussion of comments should contain such references.

(3) Any letters or material received from a commenting entity which is not legible when reproduced may be summarized by the HA. Every effort shall be made to insure that the statement will be legible when reproduced.

(4) Any unresolved environmental issues and efforts to resolve them would be discussed in this section.

(5) The final EIS should contain a summary and disposition of substantive social, economic, environmental and other comments made at the public hearing, including the alternatives which were raised.

§ 771.19 Section 4(f) statements.

(a) The purpose of a section 4(f) statement is to document the consideration, consultations and alternative studies for a determination that there are no feasible and prudent alternatives to the use of land from a publicly owned park, recreation area, or wildlife and waterfowl refuge of national, State or

local significance, as determined by the Federal, State or local official having jurisdiction thereof; or any land from a historic site of national, State or local significance as so determined by such official. The purpose of the section 4(f) statement is also to support a determination that the proposed action includes all possible planning to minimize harm.

(b) If the project will use land from a historic property that is included in or eligible for inclusion in the National Register of Historic Places, the section 4(f) statement should provide evidence that the provisions of 36 CFR Part 800 (Advisory Council on Historic Preservation, Procedures for the Protection of Historic and Cultural Properties) have been satisfied. If the project will use land from a historic site not included on or eligible for inclusion in the National Register of Historic Places, the section 4(f) statement should provide evidence that the official having jurisdiction thereof has determined it to be of national, State or local significance.

(c) A section 4(f) statement is not required when the Federal, State or local official having jurisdiction over a park, recreation area, refuge or historic site determines that it is not significant. The FHWA Division Engineer shall review the agency's non-significance determination to assure himself of the reasonableness of such determinations. In the absence of such a statement, the section 4(f) land will be considered to be significant.

(d) The provisions of this section and section 4(f) do not apply to publicly owned lands that are administered for multiple uses if the portion of the land to be taken is not in fact being used for park, recreation, wildlife, waterfowl, or historic purposes and there is no definite formulated plan for such use as determined by the official having jurisdiction over such lands. The FHWA Division Engineer shall review the agency's land use determination to assure himself of its reasonableness.

(e) Park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes designated or determined to be significant later in the development of a highway section. In such cases, a project may proceed without the preparation of a section 4(f) statement if the right-of-way from such 4(f)-type lands was acquired prior to the designation or change in significance.

(f) It is essential that the section 4(f) information necessary for the required determination be consolidated in a separate statement or in a special section of an EIS. The section 4(f) statement or special section in the EIS should be self-contained to the extent practicable. The section 4(f) statement or special section of the EIS should list factors, reasons and effects that are used to judge each alternative not feasible and prudent for the highway improvement and the special measures planned to minimize harm to the section 4(f) land. It may be necessary to repeat information contained in the EIS to eliminate unnecessary reference to the EIS.

(g) The section 4(f) statement must be coordinated with the agency having jurisdiction over the section 4(f) lands, and with the U.S. Department of the Interior, Housing and Urban Development, and, if appropriate, with the Department of Agriculture. The Regional Federal Highway Administrator, in consultation with the Secretarial Representative or other representative of the Federal agencies, shall identify the point (or points) of contact for coordination purposes. The circulation will ordinarily be accomplished by attaching it to the draft EIS or draft negative declaration. Separate circulation may be made if there are unusual conditions which warrant separate circulation. Such conditions could include, for example, when a section 4(f) area is identified, designated or involved after the final EIS is processed, and when another agency is the lead agency for EIS processing. For all other circumstances when separate circulation appears warranted, advance approval must be obtained from the Office of Environmental Policy. In such cases, separate circulation will be in the form of a supplement to the EIS, and the EIS shall contain a description of the 4(f) land involved, including a summary of the expected effects of the project on the 4(f) land, and an explanation of the unique reasons why the 4(f) determination will be circulated as a supplement. The EIS shall also include documentation to show (1) that there are no major unresolved issues outstanding regarding the section 4(f) determination; (2) that processing of the EIS and subsequent project development activity will not prejudice the study and final decision regarding the section 4(f) land; and (3) that processing the EIS and subsequent project development activity will

not restrict the consideration of any feasible and prudent alternative to the use of section 4(f) land, including the "no-build" alternative, except those alternatives demonstrated in the EIS not to be feasible and prudent. FHWA authorization for the State to proceed with the project shall be limited to a portion of the total section length covered by the EIS, which will not restrict consideration of any feasible and prudent alternative with respect to the section 4(f) land. The FHWA Division Engineer shall review the draft section 4(f) statement if separate from the EIS or negative declaration and indicate its acceptability by signing the title page before it is circulated for comment.

(h) When circulating a section 4(f) statement to the agencies noted in paragraph (g) of this section, the HA may establish a time limit of not less than 45 days for comment.

(i) The following information, where pertinent and available, should be included in the section 4(f) statement to initiate the necessary interagency review.

(1) A description of the project and section 4(f) land in sufficient detail to permit those not acquainted with the project to have an understanding of the relationship between the action and the section 4(f) land and the extent of the impact, including a detailed map or drawing of sufficient scale to discern the essential elements of the highway/section 4(f) land involvement.

(2) Size (acres or square feet) and location (maps or other exhibits such as photographs, slides, sketches, etc.).

(3) Type (recreation, historic, etc.).

(4) Available recreational activities (fishing, swimming, golf, etc.).

(5) Facilities existing and planned (description and location of ball diamonds, tennis courts, etc.).

(6) Usage (approximate number of users for each activity).

(7) Relationship to other similarly used land in the vicinity.

(8) Access (both pedestrian and vehicular) and effect thereon.

(9) Ownership (city, county, State, etc.).

(10) Applicable clauses affecting title, such as covenants, restrictions or conditions, including forfeiture.

(11) Unusual characteristics of the section 4(f) land (flooding problems, terrain conditions, or other features that either reduce or enhance the value of portions of the area).

(12) The location and amount of land (acres or square feet) to be used by the highway.

(13) The facilities affected.

(14) The probable increase or decrease in physical effects on the section 4(f) land users (noise, fumes, etc.).

(j) Accurate and detailed information is needed to support the Federal Highway Administrator's determination that there is no feasible or prudent alternative. Supporting information should demonstrate that there are unique problems, truly unusual factors present, and evidence that the cost or community disruption resulting from alternative routes reaches extraordinary magnitudes. Section 4(f) determinations shall be reviewed for legal sufficiency by the FHWA Office of the Chief Counsel.

(k) The section 4(f) statement shall include the best available information on possible measures to minimize harm to the section 4(f) land from the highway involvement. The discussion is to be as specific as possible, consistent with the state of the highway section planning and the need to demonstrate that all possible planning to minimize harm has been included in the highway proposal. The following are some of the measures which have been used to minimize harm:

(1) Provisions for compensating or replacing the section 4(f) land and improvements thereon (include the status of any agreements, i.e., agreed upon functional replacement and type of land, etc.).

(2) Design features to enhance the section 4(f) land or to lessen adverse effects (improving or restoring existing pedestrian, bicycle or vehicular access, landscaping, esthetic treatment, noise abatement measures, etc.).

(3) Coordination of construction to permit orderly transition and continual usage of section 4(f) land facilities (new facilities constructed and available for use prior to demolishing existing facilities, moving of facilities during off-season, etc.).

(4) Description of the coordination with the public agency having jurisdiction over the section 4(f) land relative to measures to minimize harm.

(1) The HA and FHWA Division Engineer should make a special effort to resolve any issues concerning section 4(f) lands prior to forwarding the final section 4(f) statement to the Regional Federal Highway Administrator.

(m) If land acquired or improved with Federal grant money (Department of Housing and Urban Development open space or Bureau of Outdoor Recreation land and water conservation funds) is involved, the final statement shall include a description of the coordination with the grantor agency.

(n) The final section 4(f) statement, including a summary of coordination, a copy of the comments received and the disposition of the comments, will ordinarily accompany the final EIS through the FHWA review process.

§ 771.20 Historic and cultural preservation procedures.

(a) The Advisory Council on Historic Preservation promulgated Procedures for the Protection of Historic and Cultural Properties, 36 CFR Part 800, pursuant to the National Historic Preservation Act of 1966 and Executive Order 11593. These procedures apply to all FHWA actions which could affect a property which is included or eligible for inclusion in the National Register of Historic Places.

(b) The National Register is constantly being enlarged by the addition of new entries. Historic places are frequently added after the processing of the draft EIS. The Advisory Council procedures require FHWA and the State Historic Preservation Officer (SHPO) to apply the National Register criteria to all possible historic sites within the project's area of potential environmental impact, at the earliest stage of planning or consideration of a proposed undertaking; therefore, potential entries should have been recognized before preparation of the draft EIS. These procedures are applicable, therefore, to historic properties regardless of the date of their being named to the National Register.

(c) If the HA, FHWA or SHPO determines that it is questionable whether a property meets the National Register criteria, FHWA shall request, in writing, an opinion from the Secretary of the Interior, Attention: The Keeper of the National Register, National Park Service, Washington, D.C. 20240, with respect to the property's eligibility for inclusion in the National Register. If the Secretary of the Interior declares the property eligible, it will be assumed that it will be named to the Register.

§ 771.21 Other agency statements.

(a) FHWA review of statements prepared by other agencies will consider the

environmental impact of the proposal on areas within this Administration's functional area of responsibility or special expertise.

(b) Agencies wishing comments on highway impacts shall forward the draft environmental statements to the appropriate FHWA regional offices for comment.

(c) The following types of actions contained in a draft EIS require FHWA Washington Headquarters review and such EIS's are to be forwarded to the Associate Administrator for Right-of-Way and Environment (HEV-10) along with regional comments for processing.

(1) Actions with national implications.

(2) Projects that involve natural, ecological, cultural, scenic, historic, or park or recreation resources of national significance.

(3) Legislation, regulations having national impacts, or national program proposals.

(4) Projects regarding the transportation of hazardous materials and natural gas and liquid-products pipelines.

(5) Water resource projects.

(d) For statements where more than one administration within DOT will comment at the regional level, the comments will be coordinated by the Secretarial Representative of the region or his designee.

(e) Copies of comments should be furnished as follows:

(1) Requesting agency—original and one copy.

(2) Office of the Secretary of Transportation (Office of Environmental Affairs, TES-70)—one copy.

(3) Secretarial Representative—one copy provided by the Region.

(4) Council on Environmental Quality (CEQ)—five copies.

(f) Any requests of the public for copies of comments should be referred to the agency originating the environmental impact statement.

PART 772—NOISE STANDARDS AND PROCEDURES

Sec.

772.1 Purpose.

772.2 Definitions (as used in this part).

772.3 Noise standards.

772.4 Exceptions.

772.5 Noise level predictions.

772.6 Applicability.

772.7 Procedures.

Sec.

772.8—772.29 [Reserved]

772.30 Noise abatement projects on existing highways.

AUTHORITY.—23 U.S.C. 109(h)–(i), 23 U.S.C. 315 and 49 CFR 148(b).

SOURCE: 38 FR 15953, June 19, 1973, unless otherwise noted.

§ 772.1 Purpose.

To provide noise standards and procedures for use by State highway agencies and the Federal Highway Administration (FHWA) in the planning and design of highways approved pursuant to title 23, United States Code, and to assure that measures are taken in the overall public interest to achieve highway noise levels that are compatible with different land uses, with due consideration also given to other social, economic and environmental effects.

§ 772.2 Definitions. (as used in this part.)

(a) *Design approval.* The approval given by the Federal Highway Administration based upon a design study report and a design public hearing or opportunity therefor.

(b) *Design noise level.* The noise levels established herein for various land uses or activities to be used for determining traffic noise impacts and the assessment of the need for and type of noise abatement treatment for a particular highway section.

(c) *Design year.* The future year used to estimate the probable traffic volume to be used as one of the primary bases for the roadway design.

(d) *Developed land uses or activities.* Those tracts of land or portions thereof which contain improvements or activities devoted to frequent human use or habitation. The date of issue of a building permit (for improvements under construction or subsequently added) establishes the date of existence. Park lands in Categories A and B of Table 1 shall include all lands (public and private) which are actually used as parks on the date the highway location is approved and those public lands formally set aside or designated for such use by a governmental agency. Activities such as farming, mining, and logging are not considered developed activities. However, the associated residences could be considered as a developed portion of the tract.

(e) *Highway section.* A substantial length of highway between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study.

(f) *L_{10} .*—The sound level that is exceeded 10 percent of the time (the 10th percentile) for the period under consideration. This value is an indicator of both the magnitude and frequency of occurrence of the loudest noise events.

(g) *Level of service C.* Traffic conditions (used and described in the Highway Capacity Manual—Highway Research Board, Special Report 87) where speed and maneuverability are closely controlled by high volumes, and where vehicles are restricted in freedom to select speed, change lanes, or pass.

(h) *Location approval.* The approval given by the FHWA (at the request of a State highway department) based upon a location study report and a corridor public hearing or opportunity therefor.

(i) *Noise level.* The weighted sound pressure level obtained by the use of a

metering characteristic and weighting A as specified in American National Standard Specification S14-1971. The abbreviation herein used is dBA.

(j) *Operating speed.* The highest overall speed at which a driver can travel on a given highway under favorable weather conditions and under prevailing traffic conditions without at any time exceeding the safe speed as determined by the design speed on a section-by-section basis.

(k) *Project development.* Studies, surveys, coordination, reviews, approvals, and other activities normally conducted during the location and design of a highway project.

(l) *Truck.* A motor vehicle having a gross vehicle weight greater than 10,000 pounds and buses having a capacity exceeding 15 passengers.

§ 772.3 Noise standards.

(a) The FHWA encourages application of the noise standards at the earliest appropriate stage in the project development process:

TABLE 1—DESIGN NOISE LEVEL/LAND USE RELATIONSHIPS

Land use	Design noise level— L_{10}	Description of land use category
<i>dBA</i>		
A.....	60 (Exterior).....	Tracts of lands in which serenity and quiet are of extraordinary significance and serve an important public need, and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose. Such areas could include amphitheaters, particular parks or portions of parks, or open spaces which are dedicated or recognized by appropriate local officials for activities requiring special qualities of serenity and quiet.
B.....	70 (Exterior).....	Residences, motels, hotels, public meeting rooms, schools, churches, libraries, hospitals, picnic areas, recreation areas, playgrounds, active sports areas, and parks.
C.....	75 (Exterior).....	Developed lands, properties or activities not included in categories A and B of this subparagraph.
D.....		For requirements on undeveloped lands see § 772.5(a) (5) and (6).
E.....	55 (Interior).....	Residences, motels, hotels, public meeting rooms, schools, churches, libraries, hospitals, and auditoriums.

(b) *Design noise level/land use relationship.* The design noise levels in Table 1 of this section are to be used during project development of a highway section to determine highway traffic noise impacts associated with different land uses or activities in existence at the time of location approval. In addition, the table is to be used to determine the need for abatement measures for traffic-generated noise for developed land uses and activities in existence at the time of location approval. Exceptions to the design noise levels may be granted on certain types of highway improvements or

portions thereof when the conditions outlined in § 772.4(a) of this part are met.

(c) The exterior noise levels apply to outdoor areas which have regular human use and in which a lowered noise level would be of benefit. These design noise level values are to be applied at those points within the sphere of human activity (at approximately ear level height) where outdoor activities actually occur. The values do not apply to an entire tract upon which the activity is based, but only to that portion in which the activity occurs. The noise level values

need not be applied to areas having limited human use or where lowered noise levels would produce little benefit. Such areas would include but not be limited to junkyards, industrial areas, railroad yards, parking lots, and storage yards.

(d) The interior design noise level in Category E of Table 1 applies to indoor activities for those situations where no exterior noise sensitive land use or activ-

ity is identified. The interior design noise level in Category E may also be considered as a basis for noise abatement measures in special situations when, in the judgment of FHWA, such consideration is in the best public interest. In the absence of noise insulating values for specific structures, interior noise level predictions may be estimated from the predicted outdoor noise level by using the following noise reduction factors:

Building type	Window condition	Noise reduction due to exterior of the structure	Corresponding highest exterior noise level which would achieve an interior design noise level of 55 dBA
		<i>dB</i>	<i>dBA</i>
All.....	Open.....	10	65
Light frame.....	Ordinary sash:		
	Closed.....	20	75
	With storm windows.....	25	80
Masonry.....	Single glazed.....	25	80
Do.....	Double glazed.....	35	90

(e) Noise reduction factors higher than those shown may be used when field measurements of the structure in question indicate that a higher value is justified.

(f) Notwithstanding the requirements and standards in paragraph (a) of this section, there may be sections of highways where it would be impossible or impracticable to apply noise abatement measures. In these situations, highway agencies should weigh the anticipated noise impacts together with other effects against the need for and the scope of the project in accordance with other FHWA directives.

§ 772.4 Exceptions.

(a) The design noise levels represent the highest desirable noise level conditions. State highway departments shall endeavor to meet the design noise levels in planning, locating, and designing highway improvements. However, there may be sections of highways where it would be impracticable to apply noise abatement measures. This could occur where abatement measures would not be feasible or effective due to physical conditions, where the costs of abatement measures are high in relation to the benefits achieved, or where the measures required to abate the noise condition conflict with other important values, such as desirable esthetic quality, important ecological conditions, highway safety, or air quality.

(b) A request for an exception to the design noise levels can be approved by the FHWA provided the highway agency has supported its request by a written summary report demonstrating that the following steps have been taken and outlining the results: The decisions made pursuant to this section, must ultimately be based upon case-by-case judgment. However, every effort should be made to obtain detailed information on the costs, benefits, and effects involved to assure that final decisions are based on a systematic, consistent, and rigorous assessment of the overall public interest.

(1) Identified noise sensitive land uses along the section of highway in question which are expected to experience future highway traffic noise levels in excess of the design levels.

(2) Thoroughly considered all feasible measures that might be taken to correct or improve the noise condition.

(3) Weighed the costs or effects of the noise abatement measures considered against the benefits which can be achieved as well as against other conflicting values such as economic reasonableness, esthetic impact, air quality, highway safety, or other similar values, and thereby established that reduction of noise levels to desirable design levels is not in the best overall public interest for that particular highway section.

(4) Considered lesser measures that could result in a significant reduction of noise levels though not to the design levels, and included such partial meas-

ures in the plans and specifications to the extent that they meet the test of economic reasonableness, practicability, and impact on other values.

§ 772.5 Noise level predictions.

(a) Noise levels to be used in applying these standards shall be obtained from a predictive method approved by the FHWA. In predicting the noise levels, the following traffic characteristics shall be used:

(1) *Automotive volume.* The future volume (adjusted for truck traffic) obtained from the lesser of the design hourly volume or the maximum volume which can be handled under traffic level of service C conditions. For automobiles, level of service C is considered to be the combination of speed and volume which creates the worst noise conditions. For those highway sections where the design hourly volume or the level of service C condition is not anticipated to occur on a regular basis during the design year, the average hourly volume for the highest 3 hours on an average day for the design year may be used.

(2) *Speed.* The operating speed, as defined in the Highway Capacity Manual, which corresponds with the design year traffic volume selected and the truck traffic predicted.

(3) (i) *Truck volume.* The design hourly truck volume shall be used for those cases where either the design hourly volume or level of service C was used for the automobile volume. Where the average hourly volume for the highest 3 hours on an average day was used for automobile traffic, comparable truck volumes should be used.

(ii) There are instances where activities associated with a particular land use (such as churches, schools, and resort hotels or residences) do not coincide with design hourly volumes. State highway agencies may request approval to compute noise predictions using traffic characteristics different from those specified. Such requests should be made on a project-by-project basis and should be accompanied by a justification.

§ 772.6 Applicability.

(a) In order to be eligible for Federal-aid participation, all projects to which the noise standards apply shall include noise abatement measures to obtain the design noise levels in these standards unless exceptions have been approved as provided herein.

(b) Projects to which noise standards apply: The noise standards apply to all highway projects planned or constructed pursuant to Title 23, United States Code, except projects unrelated to increased traffic noise levels, such as lighting, signing, landscaping, safety, and bridge replacement. Pavement overlays or pavement reconstruction can be considered as falling within this category unless the new pavement is of a type which produces more noise than the type replaced.

(c) Approvals to which compliance with noise standards is prerequisite:

(1) Projects for which location was approved prior to July 1, 1972: Compliance with noise standards shall not be a prerequisite to any subsequent approval provided design approval is secured prior to July 1, 1974. If design approval is not secured for such a project prior to July 1, 1974, compliance with the noise standards shall be a prerequisite to securing both design approval and approval of plans and specifications. However, such compliance shall not be a basis for requiring reconsideration of the highway location or any other approval action which has previously been taken for such projects.

(2) Projects for which location is approved on or after July 1, 1972:

(i) If location approval was requested on or before December 31, 1972, compliance with the noise standards shall be a prerequisite to obtaining design approval and approval of plans and specifications. Compliance with the noise standards shall not be a prerequisite to obtaining location approval, nor shall such compliance be a basis for requiring reconsideration of the highway location or any other approval action which has previously been taken for such projects. Combined location and design approval shall be handled in the same manner as separate design approval.

(ii) If location approval is requested after December 31, 1972, compliance with the noise standards shall be a prerequisite to obtaining location and design approvals as well as approval of plans and specifications.

§ 772.7 Procedures.

(a) The noise standards should be implemented at the earliest appropriate stage in the project development process. These procedures have been developed accordingly:

(b) *Project development.* A report on traffic noise will be required during the

location planning stage and the project design stage. The reports may be sections in the location and design study reports, or they may be separate. The procedures for noise analysis, identification of solutions, coordination with local officials, and incorporation of noise abatement measures are as follows:

(1) *Nonapplicable projects.* If a State highway department determines that noise standards do not apply to a particular project, the requests for location approval and design approval shall contain statements to that effect, including the basis on which the State made its determination.

(2) *Noise analysis.* For applicable projects, analyses of noise and evaluation of effects are to be made during project development studies using the following general steps:

(i) Predict the highway-generated noise level as described in the standards for each alternative under detailed study.

(ii) Identify existing land uses or activities which may be affected by noise from the highway section.

(iii) By measurement, determine the existing noise levels for developed land uses or activities.

(iv) Compare the predicted noise levels with the design level values listed in the standards. Also compare the predicted noise levels with existing noise levels determined in paragraph (b) (2) (iii) of this section. These comparisons will be the basis for determining the anticipated impact upon land uses and activities.

(v) Based upon the noise impacts determined in paragraph (b) (2) (iv) of this section, evaluate alternative noise abatement measures for reducing or eliminating the noise impact for developed lands.

(vi) Identify those situations where it appears that an exception to the design noise levels will be needed. Prepare recommendations to be included in the traffic noise report. (This report may be a portion of the location and design study reports or it may be a separate report.)

(3) *Location phase and environmental impact statement requirements.* To the extent this part is applicable to the location phase of projects, the noise report shall describe the noise problems which may be created and the plans for dealing with such problems for each alternative under detailed study. This information including a preliminary discussion of exceptions anticipated, shall be set forth in

the location study report and summarized in the environmental impact statement (if one is prepared) and, as appropriate, at the location hearing. Studies and reports for highway locations approved before December 31, 1972, need not include an analysis and report on noise. In such instances, the noise analysis and report will be required only for the design approval.

(4) *Design phase requirements.* The noise analysis prepared for the location phase is to be updated and expanded using the refined alignment and design information developed during the design studies. The report on traffic noise will include a detailed analysis of the anticipated noise impact, alternative or proposed abatement measures, discussion of coordination with local officials, and recommended exceptions.

(5) *Coordination with local officials on undeveloped lands.* Highway agencies have the responsibility for taking measures that are prudent and feasible to assure that the location and design of highways are compatible with existing land use. Local governments, on the other hand, have responsibility for land development control and zoning. Highway agencies can be of considerable assistance to local officials in these efforts with a view toward promoting compatibility between land development and highways. Therefore, for undeveloped lands (or properties) highway agencies shall cooperate with local officials by furnishing approximate generalized future noise levels for various distances from the highway improvement, and shall make available information that may be useful to local communities to protect future land development from becoming incompatible with anticipated highway noise levels.

(6) *Noise abatement measures for lands which are undeveloped at time of location approval.* (i) Noise abatement measures are not required for lands which are undeveloped at the time of location approval:

(ii) For land uses or activities which develop after location approval, noise abatement measures should be considered for incorporation in the project in the following situations:

(A) It can be demonstrated that all practicable and prudent planning and design were exercised by the local government and the developer of the property to make the activity compatible with the predicted noise levels which were

furnished to the local government and especially that a considerable amount of time has elapsed between location approval and highway construction thus limiting local government's ability to maintain control over adjoining land uses.

(B) The benefits to be derived from the use of highway funds to provide noise abatement measures is determined to outweigh the overall costs.

(C) The noise abatement measures can be provided within the highway's proposed right-of-way or wider rights-of-way or easements acquired for that purpose.

(iii) There are some situations where the design noise levels should be applied to lands which are undeveloped at the time of location approval. Some of these instances occur where the development of new land uses or activities is planned at the same time as the highway location studies. Other instances occur where planning for the new development has preceded the highway location studies but the development has been delayed. These types of situations should be treated as though the land use or activity were in existence at the time of location approval provided:

(A) The State highway agency is apprised of such prior planning.

(B) The construction of the new land use or activity is started prior to highway construction or there is good reason to believe that it will start before highway construction.

(7) *Incorporation of noise abatement measures in plans and specifications.* For those projects to which the standards apply, the plans and specifications for the highway section shall incorporate noise abatement measures to attain the design noise levels in the standards, except where an exception has been granted.

(8) *Requests for exceptions.* To the extent possible, consistent with the level of detail of the location study, identifiable exceptions should be reported in the location study report. The request for location approval shall contain or be accompanied by a request for approval of exceptions that have been identified in the location stage. Supporting material may be contained in the location study report. Subsequent requests for review and approval of additional exceptions, if any, will be similarly processed in conjunction with design approval.

(b) *Federal participation.* (1) Shifts in alignment and grade are design measures which can be used to reduce noise impacts. The following noise abatement measures may also be incorporated in a project to reduce highway-generated noise impacts. The costs of such measures may be included in projects costs.

(i) The acquisition of property rights (either in fee or a lesser interest) for providing buffer zones or for installation or construction of noise abatement barriers or devices.

(ii) The installation or construction of noise barriers or devices, whether within the highway right-of-way or on an easement obtained for that purpose.

(2) In some specific cases there may be compelling reasons to consider measures to "soundproof" structures. Situations of this kind may be considered on a case-by-case basis when they involve such public or nonprofit institutional structures as schools, churches, libraries, hospitals, and auditoriums. Proposals of this type, together with the State's recommendation for approval, shall be submitted to FHWA for consideration.

(c) *Approval authority.*—(1) *Exceptions to the design noise levels.* The FHWA Division Engineer is authorized to approve exceptions to the design noise levels and alternate traffic characteristics for noise prediction.

(2) *Noise prediction method.* Noise levels to be used in applying the noise standards shall be obtained from a prediction method approved by FHWA.

§ 772.8—772.29 [Reserved]

§ 772.30 Noise abatement projects on existing highways.

(a) Regional Federal Highway Administrators may approve noise abatement projects for previously constructed highways on any Federal-aid system when:

(1) A noise analysis has been performed using the general guidelines outlined in Section 772.7 of this part.

(2) A determination has been made by the State highway agency that the noise abatement project is clearly of high priority.

(3) The noise abatement project will achieve a significant noise reduction.

(4) The noise abatement benefits are judged to outweigh the overall economic and environmental costs of the project.

(5) The noise abatement measures are for noise-sensitive developed activities

which were in existence on January 1, 1973.

(b) The Federal share of noise abatement projects will be the same proportion as that normally used on the system on which the noise abatement project is located.

(c) Regional Federal Highway Administrators may delegate the authority in paragraph (a) of this section to Federal Highway Administration Division Engineers.

[39 FR 6697, Feb. 22, 1974]

PARTS 773—789 [RESERVED]

PART 790—PUBLIC HEARINGS AND LOCATION/DESIGN APPROVAL

Sec.	
790.1	Purpose.
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790.8	Guidelines for the consideration of social, economic, and environmental effects.
790.9	Location and design approval.
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790.11	Reimbursement for public involvement expenses.

AUTHORITY: 23 U.S.C. 101 et seq., 109(h), 128, 315; 49 U.S.C. 1651, 1657(e)(1) and 49 CFR 1.48(b).

SOURCE: 39 FR 41815, Dec. 2, 1974, unless otherwise noted.

§ 790.1 Purpose.

(a) The purpose of this part is to insure, to the maximum extent practicable, that highway locations and designs reflect and are consistent with Federal, State, and local goals and objectives. The rules, policies, and procedures established by this part are intended to afford full opportunity for effective public participation in the consideration of highway location and design proposals by highway departments before submission to the Federal Highway Administration (FHWA) for approval. They provide a medium for free and open discussion and are designed to encourage early and amicable resolution of controversial issues that may arise.

(b) This part requires State highway departments to consider fully a wide range of factors in determining highway locations and highway designs. It provides for extensive coordination of pro-

posals with public and private interests. In addition, it provides for a two-hearing procedure designed to give all interested persons an opportunity to become fully acquainted with highway proposals of concern to them and to express their views at those stages of a proposal's development when the flexibility to respond to these views still exists.

(c) This part is further designed to assure that: (1) Possible adverse economic, social, and environmental effects relating to any proposed federally funded project on any Federal-aid highway system have been fully considered in developing such project, and that

(2) Final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe, and efficient transportation, public services, and the costs of eliminating or minimizing adverse effects.

§ 790.2 Applicability.

The provisions of this part shall apply to the development of a Federal-aid highway project by a highway agency and the approval and authorization of such project by the Federal Highway Administration, until such time as the highway agency incorporates public involvement and public hearing procedures in its Action Plan pursuant to § 795.10 (b) (7) and (8) of this chapter and the Action Plan containing such provisions is approved by the FHWA. The approved Action Plan containing the public involvement and public hearing procedures will replace public hearing requirements of this part for the subject highway agency. Applicable requirements included in Part 771 of this chapter will replace reports, certifications, approvals and authorizations of this part.

(b) If preliminary engineering, acquisition of right-of-way or stage construction related to an undertaking to construct a portion of a Federal-aid highway route section is carried out without Federal-aid funds after FHWA approval of the highway section as part of the Federal-aid highway system, subsequent phases of the work are eligible for Federal-aid funding only if the nonparticipating work after January 18, 1969, is accomplished in accordance with this part. If, however, preliminary engineering, right-of-way acquisition or stage construction is completed without Federal-aid funds before such undertakings become eligible for Federal-aid fund participation

by FHWA approval of the highway section as part of a Federal-aid highway system, such actions shall not jeopardize subsequent Federal-aid highway fund participation for the highway section, provided that any preliminary engineering, right-of-way acquisition or construction accomplished subsequent to the FHWA approval of the highway system action is accomplished in accordance with applicable FHWA requirements and provided further that other FHWA requirements necessary for an FHWA approval or authorization are completed in an orderly manner.

(c) This part shall not apply to the construction of highway projects where the Federal Highway Administrator has made a formal determination that the construction of the project is urgently needed because of a national emergency, a natural disaster or a catastrophic failure.

§ 790.3 Definitions for use in this part.

(a) A "corridor public hearing" is a public hearing that: (1) Is held before the route location is approved and before the State highway department is committed to a specific proposal.

(2) Is held to ensure that an opportunity is afforded for effective participation by interested persons in the process of determining the need for, and the location of, a Federal-aid highway; and

(3) Provides a public forum that affords a full opportunity for presenting views on each of the proposed alternative highway locations and the social, economic, and environmental effects of those alternate locations.

(b) A "highway design public hearing" is a public hearing that: (1) Is held after the route location has been approved, but before the State highway department is committed to a specific design proposal.

(2) Is held to ensure that an opportunity is afforded for effective participation by interested persons in the process of determining the specific location and major design features of a Federal-aid highway; and

(3) Provides a public forum that affords a full opportunity for presenting views on major highway design features, including the social, economic, environmental, and other effects of alternate designs.

(c) "Social, economic, and environmental effects" means the direct and in-

direct benefits or losses to the community and to highway users. It includes such effects that are relevant and applicable to the particular location or design under consideration as to:

(1) Regional and community growth including general plans and proposed land use, total transportation requirements, and status of the planning process.

(2) Conservation and preservation including soil erosion and sedimentation, the general ecology of the area as well as manmade and other natural resources, such as: park and recreational facilities, wildlife and waterfowl areas, historic and natural landmarks.

(3) Public facilities and services including religious, health, and educational facilities; and public utilities, fire protection and other emergency services.

(4) Community cohesion including residential and neighborhood character and stability, highway impacts on minority and other specific groups and interests, and effects on local tax base and property values.

(5) Displacement of people, businesses, and farms including relocation assistance, availability of adequate replacement housing, economic activity (employment gains and losses, etc.).

(6) Air, noise, and water pollution including consistency with approved air quality implementation plans, FHWA noise level standards, and any relevant Federal or State water quality standards (as set forth in Parts 770, 771, and 772 of this chapter).

(7) Aesthetic and other values including visual quality, such as: "view of the road" and "view from the road," and the joint development and multiple use of space.

This listing is not meant to be exclusive, nor does it mean that each effect considered must be given equal weight in making a determination upon a particular highway location or design. (See § 790.8)

(d) "Design approval" means that action or series of actions by which the FHWA indicates to the State highway department that the essential elements of a highway as set out in § 790.9 are satisfactory or acceptable for preparation of plans, specifications and estimates (PS&E) for actual construction.

§ 790.4 Coordination.

(a) When a State highway department begins considering the development

or improvement of a traffic corridor in a particular area, it shall solicit the views of that State's resources, recreation, and planning agencies, and of those Federal agencies and local public officials and agencies, and public advisory groups which the State highway department knows or believes might be interested in or affected by the development or improvement. The State highway department shall establish and maintain a list upon which any Federal agency, local public official or public advisory group may enroll, upon its request, to receive notice of projects in any area specified by that agency, official, or group. The State highway departments are also encouraged to establish a list upon which other persons and groups interested in highway corridor locations may enroll in order to have their views considered. If the corridor affects another State, views shall also be solicited from the appropriate agencies within that State. All written views received as a result of coordination under this section must be made available to the public as a part of the public hearing procedures set forth in § 790.7.

(b) Other public hearings or informal public meetings, clearly identified as such, may be desirable either before the study of alternate routes in the corridor begins or as it progresses to inform the public about highway proposals and to obtain information from the public which might affect the scope of the study or the choice of alternatives to be considered, and which might aid in identification of critical social, economic and environmental effects at a stage permitting maximum consideration of these effects. State highway departments are encouraged to hold such a hearing or meeting whenever that action would further the objectives of this part or would otherwise serve the public interest.

§ 790.5 Hearing requirements.

(a) Both a corridor public hearing and a design public hearing must be held, or an opportunity afforded for those hearings, with respect to each Federal-aid highway project that: (1) Is on a new location; or

(2) Would have a substantially different social, economic, or environmental effect; or

(3) Would essentially change the layout or function of connecting roads or streets.

However, with respect to Secondary Road Plan projects which are subject to this part, two hearings are not required on a project covered by paragraph (a) (1) or (2) of this section, unless it will carry an average of 750 vehicles a day in the year following its completion.

(b) A single combined corridor and highway design public hearing must be held, or the opportunity for such a hearing afforded, on all other projects before route location approval, except as provided in paragraph (c) of this section.

(c) Hearings are not required for those projects that are solely for such improvements as resurfacing, widening existing lanes, adding auxiliary lanes, replacing existing grade separation structures, installing traffic control devices or similar improvements, unless the project: (1) Requires the acquisition of additional right-of-way; or

(2) Would have an adverse effect upon abutting real property; or

(3) Would change the layout or function of connecting roads or streets or of the facility being improved.

(d) With respect to a project on which a hearing was held, or an opportunity for a hearing afforded, before January 18, 1969, the following requirements apply: (1) With respect to projects which have not received location approval: (i) If location approval is not requested within 3 years after the date of the hearing or an opportunity for a hearing, compliance with the corridor hearing requirements is required unless a substantial amount of right-of-way has been acquired.

(ii) If location approval is requested within 3 years after the date of the hearing or an opportunity for a hearing, compliance with the corridor hearing requirements is not required.

(2) With respect to those projects which have not received design approval: (i) If design approval is not requested within 3 years after the date of the hearing or an opportunity for a hearing, compliance with the design hearing requirements is required.

(ii) If design approval is requested within 3 years after the date of the hearing or an opportunity for a hearing, compliance with the design hearing requirements is nevertheless required unless the Division Engineer finds that the hearing adequately dealt with design issues relating to major design features.

(e) If location approval is not requested within 3 years after the date of

the related corridor hearing held, or an opportunity for a hearing afforded, under this part, a new hearing must be held or the opportunity afforded for such a hearing.

(f) If design approval is not requested within 3 years after the date of the related design hearing held, or an opportunity for a hearing afforded, under this part, a new hearing must be held or the opportunity afforded for such a hearing.

(g) With respect to any project for which a public hearing has been held under Federal-aid procedures, and for which it is determined by the State highway department and the Division Engineer that a new hearing is desirable to consider supplemental information on social, economic, or environmental effects relative to proposals presented at a previous public hearing or with respect to additional proposals, then, as appropriate, a new corridor or design hearing should be held. When recommended by the State and approved by the Division Engineer, a new corridor hearing held in accordance with this section may be combined with the design hearing, whether or not a design hearing for the project has been previously held. In such instances, the location shall be reconsidered and a new request for location approval shall be submitted together with the request for design approval.

§ 790.6 Opportunity for public hearings.

(a) A State may satisfy the requirements for a public hearing by (1) holding a public hearing, or (2) publishing two notices of opportunity for public hearing and holding a public hearing if any written requests for such a hearing are received. The procedure for requesting a public hearing shall be explained in the notice. The deadline for submission of such a request may not be less than 21 days after the date of publication of the first notice of opportunity for public hearing, and no less than 14 days after the date of publication of the second notice of opportunity for public hearing.

(b) A copy of the notice of opportunity for public hearing shall be furnished to the Division Engineer at time of publication. If no requests are received in response to a notice within the time specified for the submission of those requests, the State highway department shall certify that fact to the Division Engineer.

(c) The opportunity for another public hearing shall be afforded in any case where proposed locations or designs are so changed from those presented in the notices specified above or at a public hearing as to have a substantially different social, economic, or environmental effect, or where § 790.5(g) is applicable.

(d) The opportunity for a public hearing shall be afforded in each case in which either the State highway department or the Division Engineer is in doubt as to whether a public hearing is required.

(e) Public hearing procedures authorized and required by State law may be followed in lieu of any particular hearing requirement of this section or § 790.7 if, in the opinion of the Administrator, such procedures are reasonably comparable to that requirement.

§ 790.7 Public hearing procedures.

(a) *Notice of public hearing.* (1) When a public hearing is to be held, a notice of public hearing shall be published at least twice in a newspaper having general circulation in the vicinity of the proposed undertaking. The notice should also be published in any newspaper having a substantial circulation in the area concerned, such as foreign language newspapers and local community newspapers. The first of the required publications shall be from 30 to 40 days before the date of the hearing, and the second shall be from 5 to 12 days before the date of the hearing. The timing of additional publications is optional.

(2) In addition to publishing a formal notice of public hearing, the State highway department shall mail copies of the notice to appropriate news media, the State's resource, recreation, and planning agencies, and appropriate representatives of the Departments of Interior and Housing and Urban Development. The State highway department shall also mail copies to other Federal agencies who have requested notice of hearing and other groups or agencies who, by nature of their function, interest, or responsibility the highway department knows or believes might be interested in or affected by the proposal. The State highway department shall establish and maintain a list upon which any Federal agency, local public official, public advisory group or agency, civic association or other community group may enroll upon its request to receive notice of

projects in any area specified by that agency, official, or group.

(3) Each notice of public hearing shall specify the date, time, and place of the hearing and shall contain a description of the proposal. To promote public understanding, the inclusion of a map or other drawing as part of the notice is encouraged. The notice of public hearing shall specify that maps, drawings, and other pertinent information developed by the State highway department and written views received as a result of the coordination outlined in § 790.4(a) will be available for public inspection and copying and shall specify where this information is available; namely, at the nearest State highway department office or at some other convenient location in the vicinity of the proposed project.

(4) A notice of highway design public hearing shall indicate that tentative schedules for right-of-way acquisition and construction will be discussed.

(5) Notices of public hearing shall indicate that relocation assistance programs will be discussed.

(6) The State highway department shall furnish the Division Engineer with a copy of the notice of public hearing at the time of first publication.

(b) *Conduct of public hearing.* (1) Public hearings are to be held at a place and time generally convenient for persons affected by the proposed undertaking.

(2) Provision shall be made for submission of written statements and other exhibits in place of, or in addition to, oral statements at a public hearing. The procedure for the submissions shall be described in the notice of public hearing and at the public hearing. The final date for receipt of such statements or exhibits shall be at least 10 days after the public hearing.

(3) At each required corridor public hearing, pertinent information about location alternatives studied by the State highway department shall be made available. At each required highway design public hearing, information about design alternatives studied by the State highway department shall be made available.

(4) The State highway department shall make suitable arrangements for responsible highway officials to be present at public hearings as necessary to conduct the hearings and to be responsive to questions which may arise.

(5) The State highway department shall describe the State-Federal relationship in the Federal-aid highway program by an appropriate brochure, pamphlet, or statement, or by other means.

(6) A State highway department may arrange for local public officials to conduct a required public hearing. The State shall be appropriately represented at such public hearing and is responsible for meeting other requirements of this part.

(7) The State highway department shall explain the relocation assistance program and relocation assistance payments available.

(8) At each public hearing the State highway department shall announce or otherwise explain that, at any time after the hearing and before the location or design approval related to that hearing, all information developed in support of the proposed location or design will be available upon request, for public inspection and copying.

(9) To improve coordination with the State highway department, it is desirable that the Division Engineer or his representative attend a public hearing as an observer. At a hearing, he may properly explain procedural and technical matters, if asked to do so. An FHWA decision regarding a proposed location or design will not be made before the State highway department has requested location or design approval in accordance with § 790.9.

(c) *Transcript.* (1) The State highway department shall provide for the making of a verbatim written transcript of the oral proceedings at each public hearing. It shall submit a copy of the transcript to the Division Engineer within a reasonable period (usually less than 2 months) after the public hearing, together with:

(i) Copies of, or reference to, or photographs of each statement or exhibit used or filed in connection with a public hearing.

(ii) Copies of, or reference to, all information made available to the public before the public hearing.

(2) The State highway department shall make copies of the materials described in paragraph (c) (1) of this section available for public inspection and copying not later than the date the transcript is submitted to the Division Engineer.

§ 790.8 Guidelines for consideration of social, economic, and environmental effects.

(a) *Pre-September 29, 1972.* State highway departments shall consider social, economic, and environmental effects before submission of requests for location or design approval, whether or not a public hearing has been held. Consideration of social, economic, and environmental effects shall include an analysis of information submitted to the State highway department in connection with public hearings or in response to the notice of the location or design for which a State highway department intends to request approval. It shall also include consideration of information developed by the State highway department or gained from other contacts with interested persons or groups.

(b) *Modified guidelines—Post-September 29, 1972.* (1) *Application.* These modified guidelines apply to projects which have not received PS&E approval as of September 29, 1972. They do not apply to projects which are already in various stages of physical construction or are exempt under the emergency provisions of § 790.2(c).

(2) *Procedures.* (i) Projects for which location and/or design approval are requested after September 29, 1972, in accordance with § 790.9 cannot receive such approval unless the request for location and design approval is accompanied by reports and other documents showing that the development of the project has taken into consideration the need for fast, safe, and efficient transportation together with highway costs, traffic benefits and public services including provisions of national defense; and which, to the extent applicable, discuss the anticipated economic, social, and environmental effects, as defined in § 790.3(c), of the proposal and alternatives under consideration.

(ii) In addition to coverage of the significant differences and reasons supporting the alternative locations and designs, discussions of the required items in § 790.3(c) and other economic, social, and environmental effects which were raised during public hearings or which were otherwise considered shall include:

(A) Identification of the adverse effects,

(B) Appropriate measures to eliminate or minimize the adverse effects,

(C) The estimated costs (expressed in either monetary, numerical, or qualitative terms) of the measures considered.

(iii) The degree of analysis of the items may vary, depending upon the scope and the nature of project, the stage of project development, and the extent of the adverse effect.

(iv) Where material required by this paragraph has been previously submitted pursuant to other requirements, such as those in § 790.9 or in Part 771 of this chapter the State highway department may either resubmit such material or make reference to it.

(v) Projects which have already received design approval, as defined herein, as of September 29, 1972, may receive PS&E approval, if otherwise satisfactory, on the basis of past State highway department submissions which identify and document the economic, social, and environmental effects previously considered with respect to these advanced projects, together with a supplemental report, if necessary, covering the consideration and disposition of the items not previously covered and now listed herein in § 790.3(c). The supplemental report shall be prepared by the State and submitted to the Division Engineer not later than the time of submission of PS&E documents for the next Federal-aid improvement of the highway section. This supplemental documentation may take the form of statements in the program submission (PR-1 or PR-9 forms and attachments) relative to the overall proposal being advanced, unless the Division Engineer determines that a more detailed report is warranted.

§ 790.9 Location and design approval.

(a) This section applies to all requests for location or design approval whether or not public hearings, or the opportunity for public hearings, are required by this part.

(b) Each request by a State highway department for approval of a route location or highway design must include a study report containing the following:

(1) Descriptions of the alternatives considered and a discussion of the anticipated social, economic, and environmental effects of the alternatives, pointing out the significant differences and the reasons supporting the proposed

location or design. In addition, the report must include an analysis of the relative consistency of the alternatives with the goals and objectives of any urban plan that has been adopted by the community concerned.

(i) Location study reports must describe the termini, the general type of facility, the nature of the service which the highway is intended to provide, and other major features of the alternatives.

(ii) Design study reports must describe essential elements such as design standards, number of traffic lanes, access control features, general horizontal and vertical alignment, right-of-way requirements and location of bridges, interchanges, and other structures.

(2) Appropriate maps or drawings of the location or design for which approval is requested.

(3) A summary and analysis of the views received concerning the proposed undertaking.

(4) A list of any prior studies relevant to the undertaking.

(c) In addition, each request by a State highway department for approval of a route location or highway design must be accompanied by documentation or reports or other acceptable material indicating compliance with § 790.8.

(d) At the time it requests approval under this section, each State highway department shall publish in a newspaper meeting the requirements of § 790.7(a)

(1) a notice describing the location or design, or both, for which it is requesting approval. The notice shall include a narrative description of the location or design. Where practicable, the inclusion of a map or sketch of that location or design is desirable. In any event, the publication shall state that such maps or sketches as well as all other information submitted in support of the request for approval is publicly available at a convenient location.

(e) The following requirements apply to the processing of requests for highway location or highway design approval: (1) *Location approval.* The Division Engineer may approve a route location and authorize design engineering only after the following requirements are met: (i) The State highway department has requested route location approval.

(ii) Corridor public hearings required by this part have been held, or the opportunity for hearings has been afforded.

(iii) The State highway department has submitted public hearing transcripts

and certificates required by section 128, title 23, United States Code.

(iv) The requirements of this part and of other applicable laws and regulations.

(2) Design approval. The Division Engineer may approve the highway design and authorize right-of-way acquisition, approve right-of-way plans, approve construction plans, specifications, and estimates, or authorize construction, only after the following requirements have been met: (i) The route location has been approved.

(ii) The State highway department has requested highway design approval.

(iii) Highway design public hearings required by this part have been held, or the opportunity for hearings has been afforded.

(iv) The State highway department has submitted the public hearing transcripts and certificates required by section 128, title 23, United States Code.

(v) The requirements of this part and of other applicable laws and regulations.

(f) The Division Engineer, under criteria promulgated by the Federal Highway Administration, may in other appropriate instances authorize the acquisition of right-of-way before a design hearing or, in exceptional cases, with the approval of the Regional Administrator, before a corridor hearing.

(g) Secondary Road Plan agreements, unless amended in accordance with Subchapter F, Part 642 of this chapter, shall incorporate procedures similar to those required for other projects and shall include provisions requiring: (1) Route location and highway design approval.

(2) Preparation of study reports as described in § 790.9(b), and

(3) Corridor and highway design public hearings in all cases where they would be required for Federal-aid projects not administered under the Secondary Road Plan. Project actions by the Division Engineer or submissions to the Division Engineer which are not now required should not be established for Secondary Road Plan projects as a result of this part.

§ 790.10 Publication of approval.

In cases where a public hearing was held, or the opportunity for a public hearing afforded, the State highway department shall publish notice of the action taken by the Division Engineer on each request for approval of a highway

location or design, or both, in a newspaper meeting the requirements of § 790.7(a)(1) within 10 days after receiving notice of that action. The notice shall include a narrative description of the location and/or design, as approved. Where practicable, the inclusion of a map or sketch of that location or design is desirable. In any event, the publication shall state that such maps or sketches as well as all other information concerning the approval is publicly available at a convenient location.

§ 790.11 Reimbursement for public involvement expenses.

Public hearings and other project-related forms of public participation are integral parts of the preliminary engineering process. Reasonable project-related costs associated with such activities sponsored by highway agencies (other than personal expenses of individuals or groups) are eligible for reimbursement with Federal-aid funds on the same basis as other preliminary engineering costs.

PARTS 791—794 [RESERVED]

PART 795—PROCESS GUIDELINES (FOR THE DEVELOPMENT OF ENVIRONMENTAL ACTION PLANS)

Sec.	
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AUTHORITY: 23 U.S.C. 109(h), 23 U.S.C. 128, 23 U.S.C. 315, 49 U.S.C. 1651, 49 U.S.C. 1657 (e)(1), 40 CFR Part 1500, and 49 CFR 1.43 (b).

SOURCE: 39 FR 41819, Dec. 2, 1974, unless otherwise noted.

§ 795.1 Purpose.

To provide to highway agencies and the Federal Highway Administration (FHWA) field offices guidelines for the development of Action Plans to assure that adequate consideration is given to possible social, economic, and environmental effects of proposed highway projects and that the decisions on such projects are made in the best overall public interest. These guidelines identify issues to be considered in reviewing the present organization and processes of a highway agency as they relate to social, economic, and environmental considerations, and in developing desirable improvements. The guidelines recognize the unique situation of each State and do not prescribe specific organizations or procedures.

§ 795.2 Definitions for use in this part.

(a) *Highway agency.* The agency with the primary responsibility for initiating and carrying forward the planning, design, and construction of Federal-aid highway projects.

(b) *Human environment.* The aggregate of all external conditions and influences (esthetic, ecological, cultural, social, economic, historical, etc.) that affect human life.

(c) *Environmental effects.* The totality of the effects of a highway project on the human and natural environment.

(d) *A-95 clearinghouse.* Those agencies and offices in State, metropolitan areas, and multi-State regions which perform the coordination functions called for in Office of Management and Budget (OMB) Circular A-95.

(e) The following definitions are provided solely to clarify the terms "system planning stage," "location stage," and "design stage" as they are used in these guidelines. A highway agency may choose to use different definitions in responding to these guidelines. If not staged otherwise, the following definitions will be assumed to be applicable.

(1) *System planning stage.* Regional analysis of transportation needs and the identification of transportation corridors.

(2) *Location stage.* From the end of system planning through the selection of a particular location.

(3) *Design stage.* From the selection of a particular location to the start of construction.

(f) *Major design features.* Those features required to describe a proposed highway improvement, including such

elements as number of traffic lanes, access control features, general horizontal and vertical alignments, approximate right-of-way requirements, and locations of bridges, interchanges and other major structures, etc.

§ 795.3 Policy.

(a) It is the FHWA's policy that full consideration be given to social, economic, and environmental effects throughout the planning of highway projects, including system planning, location, and design; that provisions for ensuring such consideration shall be incorporated in the decisionmaking process; and that decisions shall be made in the best overall public interest, taking into consideration the need for fast, safe, and efficient transportation, public services, and the cost of eliminating or minimizing possible adverse social, economic, and environmental effects.

(b) The process by which decisions are reached should be such as to merit public confidence in the highway agency. To achieve this objective, it is the FHWA's policy that: (1) Social, economic, and environmental effects be identified and studied early enough to permit analysis and consideration while alternatives are being formulated and evaluated.

(2) Other agencies and the public be involved in system planning and project development early enough to influence technical studies and final decisions.

(3) Appropriate consideration be given to reasonable alternatives, including the alternative of not building the project and alternative modes.

§ 795.4 Application.

(a) These guidelines apply to the process by which highway agencies plan and develop proposed projects, on any Federal-aid system, for which the FHWA approves the plans, specifications and estimates or has the responsibility for approving a program. They apply to system planning decisions, including those made in compliance with 23 U.S.C. 134 and to project decisions made during the location and design stages.

(b) These guidelines and the Action Plan shall only be applied to the future development of ongoing projects and to future projects. They are not retroactive, and shall not apply to any step or steps taken in the development of a project prior to the time of the implementation of the parts of the Action Plan applicable thereto. Action Plan public hearing pro-

cedures as defined in § 795.10(b) (7) shall apply only to activities or stages of project development occurring subsequent to the FHWA approval of the Action Plan containing such provisions. However, any project which had an initial (corridor) public hearing opportunity in accordance with Part 790 of this chapter shall also have a second (design) public hearing opportunity if such hearing opportunity would have been required by Part 790.

§ 795.5 Procedures.

(a) To meet the requirements of these guidelines, each highway agency shall operate under an approved Action Plan which describes the organization to be utilized and the process to be followed in the development of Federal and Federal-aid highway projects from initial system planning through design.

(b) The Action Plan should be consistent with the requirements of all applicable FHWA regulations and directives.

(c) Involvement of the public and local, State, and Federal officials and agencies, including A-95 clearinghouses and the 23 U.S.C. 134 metropolitan transportation planning agencies, should be sought throughout the development of the Action Plan. Comments should be solicited during the draft and final stage of development of the Action Plan.

(d) The FHWA, through its division and regional offices, will consult with the State in the development of the Action Plan and, within the limits of its resources, will be prepared to assist or advise.

(e) The Action Plan shall be submitted to the Governor of the State for review and approval as a means of obtaining a high degree of interagency and intergovernmental coordination. Approval by the Governor may occur prior to submittal of the Action Plan to the FHWA, or, if desired by the State, may occur concurrently with FHWA approval.

(f) The Action Plan submitted to the Governor of the State and to the FHWA should be accompanied by a description of the procedures followed in developing the Action Plan; the steps taken to involve the public and other agencies during development of the Plan; and a summary of comments received on the Plan (including the sources of such comments) and the State's disposition of these comments.

(g) Review and approval of the Action Plan and revisions thereto will be

the responsibility of the Regional Federal Highway Administrator.

(h) The FHWA will not give location approvals unless the highway agency has an approved Action Plan.

§ 795.6 Implementation and revision.

(a) The FHWA shall review the States' implementation of their Action Plans at appropriate intervals. The FHWA may rescind approval of an Action Plan or take other action it deems appropriate if in its reviews it determines that the Action Plan is not being implemented or that the Action Plan is not achieving the objectives of this part.

(b) The Action Plan shall be implemented as quickly as feasible. A program of staged implementation for the period up to November 1, 1974, shall be developed and described in the Action Plan. It is expected that all aspects of the Action Plan will be implemented by this date. If the highway agency believes that any provision in its Action Plan cannot be implemented prior to November 1, 1974, it shall present a schedule for the implementation of such provisions to the FHWA, which will consider the proposed schedule on a case-by-case basis.

(c) If the schedule for implementation set forth in an approved Action Plan is not met, the FHWA may withhold location approvals or take such other actions as it deems appropriate.

(d) An approved Action Plan may be revised to meet changed circumstances or to permit adoption of improved procedures or assignments of responsibilities.

(1) The Action Plan should identify the assignment of responsibility for developing Action Plan revisions.

(2) Section 795.5(e) (Governor's approval) shall apply to revision of the Action Plan; except that the highway agency, with the Governor's approval, may include a provision in the Action Plan to allow all or some type of revisions in the approved Action Plan without review and approval by the Governor. In such instances, the Action Plan should include a description of the types of such revisions.

(3) The highway agency in consultation with the FHWA shall determine the extent to which involvement of the public and other agencies is necessary in the development of proposed Action Plan revisions.

§ 795.7 Contents of the Action Plan.

The Action Plan shall indicate the procedures to be followed in developing highway projects, including organizational structure and assignments of responsibility by the chief administrative officer of the highway agency to positions or units within the agency. Where participation of other agencies or consultants will be utilized, this should be so indicated. The topics to be covered by the Action Plan are outlined in §§ 795.8 through 795.17.

§ 795.8 Identification of social, economic, and environmental effects.

(a) Identification of potential social, economic, and environmental effects, both beneficial and adverse, of alternative courses of action should be made as early in the study process as feasible. Timely information on such effects should be produced so that the development and consideration of alternatives and studies can be influenced accordingly. Further, the costs, financial and otherwise, of eliminating or minimizing possible adverse social, economic, and environmental effects should be determined.

(b) The Action Plan should identify:

(1) The assignment of responsibility for:

(i) Providing information on social, economic, and environmental effects of alternative courses of action during system planning, location, and design stages.

(ii) Controlling the technical quality of social, economic, and environmental studies.

(iii) Monitoring current social, economic, and environmental research, monitoring environmental effects of completed projects, where appropriate; and disseminating "state-of-the-art" information within the agency.

(2) Procedures to be followed to ensure that timely information on social, economic, and environmental effects: (i) Is developed in parallel with alternatives and related engineering data, so that the development and selection of alternatives and other elements of technical studies can be influenced appropriately.

(ii) Indicates the manner and extent to which specific groups and interests, including minority groups, are beneficially and/or adversely affected by alternative proposed improvements.

(iii) Is made available to other agencies and to the public early in studies.

(iv) Is developed with participation of staffs of local agencies and interested citizens.

(v) Is developed sufficiently to allow for the estimation of costs, financial or otherwise, of eliminating or minimizing identified adverse effects.

§ 795.9 Consideration of alternative courses of action.

(a) Alternatives considered should include, where appropriate, alternative types and scales of highway improvements and other transportation modes. The option of no improvement should be considered and used as a reference point for determining the beneficial and adverse effects of other alternatives. Appropriate alternatives which might minimize or avoid adverse social, economic, or environmental effects should be studied and described, particularly in terms of impacts upon specific groups and in relationship to 42 U.S.C. 2000d-2000d-4 (Title VI of the Civil Rights Act of 1964) and 42 U.S.C. 3601-3619 (Title VIII of the Civil Rights Act of 1968).

(b) The Action Plan should identify the assignment of responsibility and the procedures to be followed to ensure that:

(1) The consequences of the no-highway-improvement option are set forth, with data of a level of completeness and of detail consistent with that developed for other alternatives.

(2) A range of alternatives appropriate to the stage is considered at each stage from system studies through final design.

(3) Alternatives containing new transportation modes or improvements to existing modes are adequately considered, where appropriate.

(4) Nontransportation components, such as replacement housing, joint development, multiple use of rights-of-way, etc., are in coordination with transportation components.

(5) Suggestions from outside the agency are given careful consideration.

§ 795.10 Involvement of other agencies and the public.

(a) The President has directed Federal agencies to "develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties" (Executive Order 11514, 35 F.R. 4247). Interested parties should have adequate

opportunities to express their views early enough in the study process to influence the course of studies, as well as the actions taken. Information about the existence, status, and results of studies should be made available to other agencies and the public throughout those studies. Public hearings should be only one component of the agency's program to obtain public involvement.

(b) The Action Plan should identify the assignment of responsibility and procedures to be followed: (1) To ensure that information is made available to other agencies and the public throughout the duration of project studies, and that such information is as clear and comprehensible as practicable concerning:

(i) The alternatives being considered.

(ii) The effects of alternatives, both beneficial and adverse, and the manner and extent to which specific groups and interests, including minority groups, are affected.

(iii) Right-of-way and relocation assistance programs and relocation plans.

(iv) The proposed time schedule of project development, including major points of public interest.

(2) To clearly indicate the organizational unit or units within the highway agency to which the public can go for information outlined in paragraph b(1) of this section, and for assistance to clarify or interpret the information.

(3) To ensure that interested parties, including local governments and metropolitan, regional, State, and Federal agencies, and the public have an opportunity to participate in an open exchange of views throughout the system planning, location, and design stages.

(4) To utilize appropriate agencies with area-wide responsibilities to assist in the coordination of viewpoints during project development.

(5) To consult with the responsible local public officials and involve appropriately the organization which is officially established to conduct continuing, comprehensive, cooperative transportation planning in urbanized areas of over 50,000 population under 23 U.S.C. 134.

(6) To select and coordinate procedures, in addition to formal public hearings, to be used to inform and involve the public.

(7) To ensure adequate opportunity for public hearing(s) on the need for the proposed project; alternative courses of action; alternative project locations and

major design features; social, economic, environmental and other effects of the alternatives; and the consistency of the project with local planning goals and objectives. The Action Plan shall include:

(i) Provisions for one or more public hearings to be held at a convenient time and place, or the opportunity for hearing(s) to be afforded, on any Federal-aid project which requires the acquisition of significant amounts of right-of-way, substantially changes the layout or function of connecting roadways or of the facility being improved, has a significant adverse impact on abutting real property, or otherwise has a significant social, economic, environmental or other effect.

(ii) The stage(s) of project development at which hearing opportunities will be afforded and the function and coverage of each hearing, including provisions that each hearing will be held before the highway agency becomes committed to any alternative presented at the hearing, and that the alternatives presented at each hearing will be developed to comparable levels of detail.

(iii) Public notification procedures that will be used to inform the public of hearing opportunities, including newspaper publication of hearing notices, press releases and other means that are likely to reach those interested in or affected by proposed projects. Initial hearing notices shall be published at least 30 days in advance of hearings.

(iv) A description of what information is presented or made available to the public and the procedures for receiving verbal and written commentary from the public to assure that the public has adequate opportunity to participate in the hearing process and to be informed of the alternatives studied and their potential effects. Information such as engineering, social, economic and environmental studies; draft environmental impact statements; noise and air quality studies; and relocation program descriptions should be made available before the hearing(s) for inspection and copying and should be provided at the hearing(s).

(v) Provisions for additional hearing opportunities where there has been (A) substantial change in the proposal, or (B) unanticipated development in the area affected by the proposal, or (C) change due to an unusually long lapse of time since the last hearing, or (D) identification of significant social, economic, or environmental effects not previously considered at earlier hearings.

(8) To provide for the submission of reports, certifications and, if appropriate, public hearing transcripts as required by 23 U.S.C. 128 for each public hearing opportunity.

§ 795.11 Systematic interdisciplinary approach.

(a) 42 U.S.C. 4332 (Section 102 of the National Environmental Policy Act of 1969) requires that agencies use "a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment."

(b) The Action Plan should indicate procedural arrangements and assignments of responsibilities which will be necessary to meet this requirement, including: (1) The organization and staffing of interdisciplinary project groups which are systematic and interdisciplinary in approach, including the possible use of consultants and representatives of other State or local agencies.

(2) Recruitment and training of personnel with skills which are appropriate to add on a full-time basis, and the development of appropriate career patterns, including management opportunities.

(3) Additional training for present personnel to enhance their capabilities to work effectively in an interdisciplinary environment.

§ 795.12 Decisionmaking process.

(a) The process of reaching various decisions on projects should be reviewed to assure that it provides for the appropriate consideration of all economic, social, environmental and transportation factors as required by these guidelines.

(b) The Action Plan should identify: (1) The processes through which other State and local agencies, government officials, and private groups may contribute to reaching decisions, and the authority, if any, which other agencies or government officials can exercise over decisions.

(2) Different decision processes, if any, for various categories of projects (e.g., Interstate, Primary, Secondary, TOPICS) and for various geographic regions of the State (e.g., in various urban and rural regions) to reflect local differences in the nature of potential environmental effects or in the structure of local governments and institutions.

(3) The processes to be used to obtain participation in decisions by officials of

appropriate agencies in other States for those situations in which the potential social, economic, and environmental effects are of interstate concern.

§ 795.13 Interrelation of system and project decisions.

(a) Many significant economic, social, and environmental effects of a proposed project are difficult to anticipate at the system planning stage and become clear only during location and design studies. Conversely, many significant environmental effects of a proposed project are set at the system planning stage. Decisions at the system and project stages shall be made with consideration of their social, economic, environmental, and transportation effects to the extent possible at each stage.

(b) The Action Plan should identify:

(1) Procedures to be followed to: (i) Ensure that potential social, economic, and environmental effects are identified insofar as practicable in system planning studies as well as in later stages of location and design. (ii) Provide for reconsideration of earlier decisions which may be occasioned by results of further study, the availability of additional information, or the passage of time between decisions.

(2) Assignment of responsibility for ensuring that project studies are effectively coordinated with system planning on a continuing basis.

§ 795.14 Levels of action by project category.

(a) A highway agency may develop different procedures to be followed depending upon the economic, social, environmental, or transportation significance of the highway project to be developed. Different procedures may also be adopted for various categories of projects, such as TOPICS, new route locations, or secondary roads, and for various regions of the State, such as urban areas or zones of particular environmental significance.

(b) The Action Plan should identify:

(1) The categories which the highway

agency will use to distinguish the different degrees of effort which under normal circumstances will be devoted to various types of projects.

(2) Assignment of responsibility for determining, initially and in periodic reviews, the category of each ongoing project.

(3) Procedures to be followed for each category (including identification of impacts, public involvement, decision process, and other issues covered in these guidelines).

§ 795.15 Responsibility for implementation.

Assignment of responsibility for implementation of the Action Plan should be identified.

§ 795.16 Fiscal and other resources.

(a) An important component of the Action Plan is identification of resources of the highway agency and of other agencies required to perform the identified procedures and execute the assigned responsibilities.

(b) The Action Plan should identify:

(1) The resources of the highway agency (in terms of personnel and funding) that will be utilized in implementing and carrying out the Action Plan.

(2) Resources that are available in other agencies to provide necessary information on social, economic, and environmental effects.

(3) Programs for the addition of trained personnel or fiscal or other resources to either the highway agency itself or other agencies.

§ 795.17 Consistency with existing laws, regulations, and directives.

The highway agency should identify and report, either in the Action Plan or otherwise, areas where existing Federal and State laws, regulations, and administrative directives prevent or hamper full compliance with these guidelines. Where appropriate, recommendations and proposed actions to overcome such difficulties should be described.

PARTS 796—799 [RESERVED]

SUBCHAPTER I—PUBLIC TRANSPORTATION

PARTS 800—899 [RESERVED]

CHAPTER II—HIGHWAY SAFETY PROGRAM STANDARDS, DEPARTMENT OF TRANSPORTATION ¹

SUBCHAPTER A [RESERVED]

SUBCHAPTER B—STANDARDS

Part

- 1204 Uniform Standards for State Highway Safety Programs.
- 1206 Rules of Procedure for invoking sanctions under the Highway Safety Act of 1966.
- 1213 Incentive Grant Criteria for State Safety Belt Use Laws.
- 1214 Incentive grant criteria for reduction of State annual highway fatality rates.
- 1230 Highway Safety Program Standards—Applicability to Federally Administered Areas.

SUBCHAPTER A [RESERVED]

SUBCHAPTER B—STANDARDS

PART 1204—UNIFORM STANDARDS FOR STATE HIGHWAY SAFETY PROGRAMS ²

Subpart A [Reserved]

Subpart B—Standards

AUTHORITY: The provisions of this Part 1204 issued under sec. 6(a)(6)(B), 80 Stat. 937; 23 U.S.C. 315, 401, 402, 49 U.S.C. 1655, unless otherwise noted.

SOURCE: The provisions of this Part 1204 appear at 33 F.R. 16337, Nov. 7, 1968 (Standards 14—16); 33 F.R. 16560, Nov. 14, 1968 (Standards 1—13), 36 F.R. 1137, Jan. 23, 1971; 36 F.R. 22574, Nov. 25, 1971; 37 F.R. 6575, Mar. 31, 1972; 37 F.R. 9212, May 6, 1972 (Standard 17); 37 F.R. 9623, May 13, 1972 (Standard 18), unless otherwise noted. Redesignated at 38 FR 10811, May 2, 1973.

§ 1204.4 Highway Safety Program Standards.

The Uniform Standards for State Highway Safety Programs are set forth in this subpart.

¹ 36 F.R. 22574, Nov. 25, 1971.

² 38 FR 10811, May 2, 1973.

HIGHWAY SAFETY PROGRAM STANDARD NUMBERS AND TITLES

Sec.

- 1 Periodic Motor Vehicle Inspection.
- 2 Motor Vehicle Registration.
- 3 Motorcycle Safety.
- 4 Driver Education.
- 5 Driver Licensing.
- 6 Codes and Laws.
- 7 Traffic Courts.
- 8 Alcohol in Relation to Highway Safety.
- 9 Identification and Surveillance of Accident Locations.
- 10 Traffic Records.
- 11 Emergency Medical Services.
- 12 Highway Design, Construction and Maintenance.
- 13 Traffic Engineering Services.
- 14 Pedestrian Safety.
- 15 Police Traffic Services.
- 16 Debris Hazard Control and Cleanup.
- 17 Pupil transportation safety.
- 18 Accident investigation and reporting.

HIGHWAY SAFETY PROGRAM STANDARD No. 1

PERIODIC MOTOR VEHICLE INSPECTION

Each State shall have a program for periodic inspection of all registered vehicles or other experimental, pilot, or

demonstration program approved by the Secretary, to reduce the number of vehicles with existing or potential conditions which cause or contribute to accidents or increase the severity of accidents which do occur, and shall require the owner to correct such conditions.

I. The program shall provide, as a minimum, that:

A. Every vehicle registered in the State is inspected either at the time of initial registration and at least annually thereafter, or at such other time as may be designated under an experimental, pilot, or demonstration program approved by the Secretary.

B. The inspection is performed by competent personnel specifically trained to perform their duties and certified by the State.

C. The inspection covers systems, subsystems, and components having substantial relation to safe vehicle performance.

D. The inspection procedures equal or exceed criteria issued or endorsed by the National Highway Traffic Safety Administration.

E. Each inspection station maintains records in a form specified by the State, which include at least the following information:

1. Class of vehicle.
2. Date of inspection.
3. Make of vehicle.
4. Model year.
5. Vehicle identification number.
6. Defects by category.
7. Identification of inspector.
8. Mileage or odometer reading.

F. The State publishes summaries of records of all inspection stations at least annually, including tabulations by make and model of vehicle.

II. The program shall be periodically evaluated by the State and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 2

MOTOR VEHICLE REGISTRATION

Each State shall have a motor vehicle registration program, which shall provide for rapid identification of each vehicle and its owner; and shall make available pertinent data for accident research and safety program development.

I. The program shall be such that every vehicle operated on public high-

ways is registered and the following information is readily available for each vehicle:

- A. Make.
- B. Model year.
- C. Identification number (rather than motor number).
- D. Type of body.
- E. License plate number.
- F. Name of current owner.
- G. Current address of owner.
- H. Registered gross laden weight of every commercial vehicle.

II. Each program shall have a records system that provides at least the following services:

A. Rapid entry of new data into the records or data system.

B. Controls to eliminate unnecessary or unreasonable delay in obtaining data.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.

D. Data available for statistical compilation as needed by authorized sources.

E. Identification and ownership of vehicle sought for enforcement or other operation needs.

III. This program shall be periodically evaluated by the State, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 3

MOTORCYCLE SAFETY

For the purposes of this standard a motorcycle is defined as any motor-driven vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride within an enclosed cab.

Each State shall have a motorcycle safety program to insure that only persons physically and mentally qualified will be licensed to operate a motorcycle; that protective safety equipment for drivers and passengers will be worn; and that the motorcycle meets standards for safety equipment.

I. The program shall provide as a minimum that:

A. Each person who operates a motorcycle:

1. Passes an examination or reexamination designed especially for motorcycle operation.

2. Holds a license issued specifically for motorcycle use or a regular license endorsed for each purpose.

B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.

C. Each motorcycle passenger wears an approved safety helmet, and is provided with a seat and footrest.

D. Each motorcycle is equipped with a rear-view mirror.

E. Each motorcycle is inspected at the time it is initially registered and at least annually thereafter, or in accordance with the State's inspection requirements.

II. The program shall be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 4

DRIVER EDUCATION

Each State, in cooperation with its political subdivisions, shall have a driver education and training program. This program shall provide at least that:

I. There is a driver education program available to all youths of licensing age which:

A. Is taught by instructors certified by the State as qualified for these purposes.

B. Provides each student with practice driving and instruction in at least the following:

1. Basic and advanced driving techniques including techniques for handling emergencies.

2. Rules of the road, and other State laws and local motor vehicle laws and ordinances.

3. Critical vehicle systems and subsystems requiring preventive maintenance.

4. The vehicle, highway and community features:

a. That aid the driver in avoiding crashes.

b. That protect him and his passengers in crashes.

c. That maximize the salvage of the injured.

5. Signs, signals, and highway markings, and highway design features which require understanding for safe operation of motor vehicles.

6. Differences in characteristics of urban and rural driving including safe use of modern expressways.

7. Pedestrian safety.

C. Encourages students participating in the program to enroll in first aid training.

II. There is a State research and development program including adequate research, development and procurement of practice driving facilities, simulators, and other similar teaching aids for both school and other driver training use.

III. There is a program for adult driver training and retraining.

IV. Commercial driving schools are licensed and commercial driving instructors are certified in accordance with specific criteria adopted by the State.

V. The program shall be periodically evaluated by the State, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 5

DRIVER LICENSING

Each State shall have a driver licensing program: (a) To insure that only persons physically and mentally qualified will be licensed to operate a vehicle on the highways of the State, and (b) to prevent needlessly removing the opportunity of the citizen to drive. The program shall provide, as a minimum, that:

I. Each driver holds only one license, which identifies the type(s) of vehicle(s) he is authorized to drive.

II. Each driver submits acceptable proof of date and place of birth in applying for his original license.

III. Each driver:

A. Passes an initial examination demonstrating his:

1. Ability to operate the class(es) of vehicle(s) for which he is licensed.

2. Ability to read and comprehend traffic signs and symbols.

3. Knowledge of laws relating to traffic (rules of the road) safe driving procedures, vehicle and highway safety features, emergency situations that arise in the operation of an automobile, and other driver responsibilities.

4. Visual acuity, which must meet or exceed State standards.

B. Is reexamined at an interval not to exceed 4 years, for at least visual acuity and knowledge of rules of the road.

NOTE: For a partial temporary waiver of paragraph III.B. to permit the State of North Carolina to conduct a pilot program to begin immediately and terminate June 30, 1977, see 39 FR 40949, Nov. 22, 1974.

IV. A record on each driver is maintained which includes positive identification, current address, and driving history. In addition, the record system shall provide the following services:

A. Rapid entry of new data into the system.

B. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

D. Ready availability of data for statistical compilation as needed by authorized sources.

E. Ready identification of drivers sought for enforcement or other operational needs.

V. Each license is issued for a specific term, and must be renewed to remain valid. At time of issuance or renewal each driver's record must be checked.

VI. There is a driver improvement program to identify problem drivers for record review and other appropriate actions designed to reduce the frequency of their involvement in traffic accidents or violations.

VII. There is:

A. A system providing for medical evaluation of persons whom the driver licensing agency has reason to believe have mental or physical conditions which might impair their driving ability.

B. A procedure which will keep the driver license agency informed of all licensed drivers who are currently applying for or receiving any type of tax, welfare or other benefits or exemptions for the blind or nearly blind.

C. A medical advisory board or equivalent allied health professional unit composed of qualified personnel to advise the driver license agency on medical criteria and vision standards.

VIII. The program shall be periodically evaluated by the State and the National Highway Traffic Safety Administration shall be provided with an evaluation summary. The evaluation shall attempt to ascertain the extent to which driving without a license occurs.

HIGHWAY SAFETY PROGRAM STANDARD No. 6

CODES AND LAWS

Each State shall develop and implement a program to achieve uniformity of traffic codes and laws throughout the

State. The program shall provide at least that:

I. There is a plan to achieve uniform rules of the road in all of its jurisdictions.

II. There is a plan to make the State's unified rules of the road consistent with similar unified plans of other States. Toward this end, each State shall undertake and maintain continuing comparisons of all State and local laws, statutes and ordinances with the comparable provisions of the Rules of the Road section of the Uniform Vehicle Code.

HIGHWAY SAFETY PROGRAM STANDARD No. 7

TRAFFIC COURTS

Each State in cooperation with its political subdivisions shall have a program to assure that all traffic courts in it complement and support local and Statewide traffic safety objectives. The program shall provide at least that:

I. All convictions for moving traffic violations shall be reported to the State traffic records system.

II. Program Recommendations

In addition the State should take appropriate steps to meet the following recommended conditions:

A. All individuals charged with moving hazardous traffic violations are required to appear in court.

B. Traffic courts are financially independent of any fee system, fines, costs, or other revenue such as posting or forfeiture of bail or other collateral resulting from processing violations of motor-vehicle laws.

C. Operating procedures, assignment of judges, staff and quarters insure reasonable availability of court services for alleged traffic offenders.

D. There is a uniform accounting system regarding traffic violation notices, collection of fines, fees and costs.

E. There are uniform rules governing court procedures in traffic cases.

F. There are current manuals and guides for administration, court procedures, and accounting.

HIGHWAY SAFETY PROGRAM STANDARD No. 8 ALCOHOL IN RELATION TO HIGHWAY SAFETY

Each State, in cooperation with its political subdivisions, shall develop and implement a program to achieve a reduction in those traffic accidents arising in whole or in part from persons driving under the influence of alcohol. The program shall provide at least that:

I. There is a specification by the State of the following with respect to alcohol related offenses:

A. Chemical test procedures for determining blood-alcohol concentrations.

B. (1) The blood-alcohol concentrations, not higher than .10 percent by weight, which define the terms "intoxicated" or "under the influence of alcohol," and

(2) A provision making it either unlawful, or presumptive evidence of illegality, if the blood-alcohol concentration of a driver equals or exceeds the limit so established.

II. Any person placed under arrest for operating a motor vehicle while intoxicated or under the influence of alcohol is deemed to have given his consent to a chemical test of his blood, breath, or urine for the purpose of determining the alcohol content of his blood.

III. To the extent practicable, there are quantitative tests for alcohol:

A. On the bodies of all drivers and adult pedestrians who die within 4 hours of a traffic accident.

B. On all surviving drivers in accidents fatal to others.

IV. There are appropriate procedures established by the State for specifying:

A. The qualifications of personnel who administer chemical tests used to determine blood, breath, and other body alcohol concentrations.

B. The methods and related details of specimen selection, collection, handling, and analysis.

C. The reporting and tabulation of the results.

V. The program shall be periodically evaluated by the State, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 9 IDENTIFICATION AND SURVEILLANCE OF ACCIDENT LOCATIONS

Each State, in cooperation with county and other local governments, shall have a program for identifying accident locations and for maintaining surveillance of those locations having high accident rates or losses.

I. The program shall provide, as a minimum, that:

A. There is a procedure for accurate identification of accident locations on all roads and streets.

1. To identify accident experience and losses on any specific sections of the road and street system.

2. To produce an inventory of:

a. High accident locations.

b. Locations where accidents are increasing sharply.

c. Design and operating features with which high accident frequencies or severities are associated.

3. To take appropriate measures for reducing accidents.

4. To evaluate the effectiveness of safety improvements on any specific section of the road and street system.

B. There is a systematically organized program:

1. To maintain continuing surveillance of the roadway network for potentially high accident locations.

2. To develop methods for their correction.

II. The program shall be periodically evaluated by the State and the Federal Highway Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 10

TRAFFIC RECORDS

Each State, in cooperation with its political subdivisions, shall maintain a traffic records system. The Statewide system (which may consist of compatible subsystems) shall include data for the entire State. Information regarding drivers, vehicles, accidents, and highways shall be compatible for purposes of analysis and correlation. Systems maintained by local governments shall be compatible with, and capable of furnishing data to the State system. The State system shall be capable of providing summaries, tabulations and special analyses to local governments on request.

The record system shall include: (a) Certain basic minimum data and (b) procedures for statistical analyses of these data.

The program shall provide as a minimum that:

I. Information on vehicles and system capabilities includes (conforms to Motor Vehicle Registration standard):

A. Make.

B. Model year.

C. Identification number (rather than motor number).

D. Type of body.

E. License plate number.

F. Name of current owner.

G. Current address of owner.

H. Registered gross laden weight of every commercial vehicle.

I. Rapid entry of new data into the records or data system.

J. Controls to eliminate unnecessary or unreasonable delay in obtaining data.

K. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.

L. Data available for statistical compilation as needed by authorized sources.

M. Identification and ownership of vehicles sought for enforcement or other operational needs.

II. Information on drivers and system capabilities includes (conforms to Driver Licensing standard):

A. Positive identification.

B. Current address.

C. Driving history.

D. Rapid entry of new data into the system.

E. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

F. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

G. Ready availability of data for statistical compilation as needed by authorized sources.

H. Ready identification of drivers sought for enforcement or other operational needs.

III. Information on types of accidents includes:

A. Identification of location in space and time.

B. Identification of drivers and vehicles involved.

C. Type of accident.

D. Description of injury and property damage.

E. Description of environmental conditions.

F. Causes and contributing factors, including the absence of or failure to use available safety equipment.

IV. There are methods to develop summary listings, cross tabulations, trend analyses and other statistical treatments of all appropriate combinations and aggregations of data items in the basic minimum data record of drivers and accident and accident experience by specified groups.

V. All traffic records relating to accidents collected hereunder shall be open

to the public in a manner which does not identify individuals.

VI. The program shall be periodically evaluated by the State and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 11

EMERGENCY MEDICAL SERVICES

Each State, in cooperation with its local political subdivisions, shall have a program to ensure that persons involved in highway accidents receive prompt emergency medical care under the range of emergency conditions encountered. The program shall provide, as a minimum, that:

I. There are training, licensing, and related requirements (as appropriate) for ambulance and rescue vehicle operators, attendants, drivers, and dispatchers.

II. There are requirements for types and number of emergency vehicles including supplies and equipment to be carried.

III. There are requirements for the operation and coordination of ambulances and other emergency care systems.

IV. There are first aid training programs and refresher courses for emergency service personnel, and the general public is encouraged to take first aid courses.

V. There are criteria for the use of two-way communications.

VI. There are procedures for summoning and dispatching aid.

VII. There is an up-to-date, comprehensive plan for emergency medical services, including:

A. Facilities and equipment.

B. Definition of areas of responsibility.

C. Agreements for mutual support.

D. Communications systems.

VIII. This program shall be periodically evaluated by the State and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 12

HIGHWAY DESIGN, CONSTRUCTION AND MAINTENANCE

Every State in cooperation with county and local governments shall have a program of highway design, construction, and maintenance to improve highway safety. Standards applicable to specific

programs are those issued or endorsed by the Federal Highway Administrator.

I. The program shall provide, as a minimum that:

A. There are design standards relating to safety features such as sight distance, horizontal and vertical curvature, spacing of decision points, width of lanes, etc., for all new construction or reconstruction, at least on expressways, major streets and highways, and through streets and highways.

B. Street systems are designated to provide a safe traffic environment for pedestrians and motorists when subdivisions and residential areas are developed or redeveloped.

C. Roadway lighting is provided or upgraded on a priority basis at the following locations:

1. Expressways and other major arteries in urbanized areas.

2. Junctions of major highways in rural areas.

3. Locations or sections of streets and highways having high ratios of night-to-day motor vehicle and/or pedestrian accidents.

4. Tunnels and long underpasses.

D. There are standards for pavement design and construction with specific provisions for high skid resistance qualities.

E. There is a program for resurfacing or other surface treatment with emphasis on correction of locations or sections of streets and highways with low skid resistance and high or potentially high accident rates susceptible to reduction by providing improved surfaces.

F. There is guidance, warning and regulation of traffic approaching and traveling over construction or repair sites and detours.

G. There is a systematic identification and tabulation of all rail-highway grade crossings and a program for the elimination of hazards and dangerous crossings.

H. Roadways and the roadsides are maintained consistent with the design standards which are followed in construction, to provide safe and efficient movement of traffic.

I. Hazards within the highway right-of-way are identified and corrected.

J. There are highway design and construction features wherever possible for accident prevention and survivability including at least the following:

1. Roadsides clear of obstacles, with clear distance being determined on the basis of traffic volumes, prevailing

speeds, and the nature of development along the street or highway.

2. Supports for traffic control devices and lighting that are designed to yield or break away under impact wherever appropriate.

3. Protective devices that afford maximum protection to the occupants of vehicles wherever fixed objects cannot reasonably be removed or designed to yield.

4. Bridge railings and parapets which are designed to minimize severity of impact, to retain the vehicle, to redirect the vehicle so that it will move parallel to the roadway, and to minimize danger to traffic below.

5. Guardrails, and other design features which protect people from out-of-control vehicles at locations of special hazard such as playgrounds, schoolyards and commercial areas.

K. There is a post-crash program which includes at least the following:

1. Signs at freeway interchanges directing motorists to hospitals having emergency care capabilities.

2. Maintenance personnel trained in procedures for summoning aid, protecting others from hazards at accident sites, and removing debris.

3. Provisions for access and egress for emergency vehicles to freeway sections where this would significantly reduce travel time without reducing the safety benefits of access control.

II. This program shall be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the Federal Highway Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 13

TRAFFIC ENGINEERING SERVICES

Each State, in cooperation with its political subdivisions, and each Federal department or agency which controls highways open to public travel or supervises traffic operations, shall have a program for applying traffic engineering measures and techniques, including the use of traffic control devices, to reduce the number and severity of traffic accidents.

I. The program as a minimum shall consist of:

A. A comprehensive manpower development plan to provide the necessary traffic engineering capability, including:

1. Provisions for supplying traffic engineering assistance to those jurisdictions unable to justify a full-time traffic engineering staff.

2. Provisions for upgrading the skills of practicing traffic engineers, and providing basic instruction in traffic engineering techniques to subprofessionals and technicians.

B. Utilization of traffic engineering principles and expertise in the planning, design, construction, and maintenance of the public roadways, and in the application of traffic control devices.

C. A traffic control devices plan including:

1. An inventory of all traffic control devices.

2. Periodic review of existing traffic control devices, including a systematic upgrading of substandard devices to conform with standards issued or endorsed by the Federal Highway Administration.

3. A maintenance schedule adequate to insure proper operation and timely repair of control devices, including daytime and nighttime inspections.

4. Where appropriate, the application and evaluation of new ideas and concepts in applying control devices and in the modification of existing devices to improve their effectiveness through controlled experimentation.

D. An implementation schedule to utilize traffic engineering manpower to:

1. Review road projects during the planning, design, and construction stages to detect and correct features that may lead to operational safety difficulties.

2. Install safety-related improvements as a part of routine maintenance and/or repair activities.

3. Correct conditions noted during routine operational surveillance of the roadway system to rapidly adjust for the changes in traffic and road characteristics as a means of reducing accident frequency or severity.

4. Conduct traffic engineering analyses of all high accident locations and development of corrective measures.

5. Analyze potentially hazardous locations, such as sharp curves, steep grades, and railroad grade crossings and develop appropriate countermeasures.

6. Identify traffic control needs and determine short and long range requirements.

7. Evaluate the effectiveness of specific traffic control measures in reducing the

frequency and severity of traffic accidents.

8. Conduct traffic engineering studies to establish traffic regulations such as fixed or variable speed limits.

II. This Program shall be periodically evaluated by the State, or appropriate Federal department or agency where applicable, and the Federal Highway Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 14

PEDESTRIAN SAFETY

Every State in cooperation with its political subdivisions shall develop and implement a program to insure the safety of pedestrians of all ages. The program shall provide, as a minimum, that:

I. There is a continuing statewide inventory of pedestrian-motor vehicle accidents, identifying specifically:

A. The locations and times of all such accidents.

B. The age of all of the pedestrians injured or killed.

C. Where feasible, to determine whether the exterior features of the vehicle produced or aggravated an injury.

D. The color and shade of clothing worn by pedestrians when injured or killed, and the visibility conditions which prevailed at the time.

E. The extent to which alcohol is present in the blood of fatally injured pedestrians 16 years of age and older.

F. Where possible, to determine, the extent to which pedestrians involved in accidents have physical or mental disabilities.

II. There are established Statewide operational procedures for improving the protection of pedestrians through reduction of potential conflicts with vehicles:

A. By application of traffic engineering practices including pedestrian signals, signs, markings, parking regulations, and other pedestrian and vehicle traffic control devices.

B. By land-use planning in new and redevelopment areas for safe pedestrian movement.

C. By provision of pedestrian bridges, barriers, sidewalks and other means of physically separating pedestrian and vehicle pathways.

D. By provision of environmental illumination at high pedestrian volume and/or potentially hazardous pedestrian crossings.

III. There is established a Statewide program for familiarizing drivers with the pedestrian problem and with ways to avoid pedestrian collisions.

A. The program content shall include emphasis on:

(1) Behavior characteristics of the the three types of pedestrians most commonly involved in accidents with vehicles: (i) Children; (ii) persons under the influence of alcohol; (iii) the elderly;

(2) Accident avoidance techniques that take into account the hazardous conditions, and behavior characteristics displayed by each of the three high risk pedestrian groups listed in subparagraph (1).

B. Emphasis on this program content shall be included in:

(1) All driver education and training courses;

(2) Driver improvement courses;

(3) Driver license examinations.

IV. There are statewide programs for training and educating all members of the public as to safe pedestrian behavior on or near streets and highways.

A. For children, youths and adults enrolled in schools, beginning at the earliest possible age.

B. For the general population via the public media.

V. There is a statewide program for the protection of children walking to and from school, entering and leaving school buses, and in neighborhood play.

VI. There is a statewide program for establishment and enforcement of traffic regulations designed to achieve orderly pedestrian and vehicle movement and to reduce vehicle-pedestrian conflicts.

VII. This program shall be periodically evaluated by the States, and the National Highway Traffic Safety Administration and the Federal Highway Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 15

POLICE TRAFFIC SERVICES

Every State in cooperation with its political subdivisions shall have a program to insure efficient and effective police services utilizing traffic patrols: To enforce traffic laws; to prevent accidents; to aid the injured; to document the particulars of individual accidents; to supervise accident cleanup and to restore safe and orderly traffic movement.

I. The program shall provide as a minimum that there are:

A. Uniform training procedures in all aspects for police supervision of vehicular and pedestrian traffic related to highway safety, including use of appropriate instructional materials and techniques for recruit, advanced, in-service, and special course training.

B. Periodic in-service training courses for uniformed and other police department employees assigned to traffic duties dealing with:

(1) Administration and management of police, vehicular and pedestrian traffic services.

(2) Analysis, interpretation and use of traffic records data.

(3) Insurance of prompt reliable post-accident response, including skilled aid to the injured.

(4) Accomplishing postaccident responsibilities.

C. Procedures for the selective assignment of trained police personnel to supervise vehicular and pedestrian traffic duties including enforcement patrols in hazardous or congested areas based on: time and location of

(1) Traffic volume.

(2) Accident experience.

(3) Traffic violation frequency.

(4) Emergency and service needs.

D. Procedures for investigating, recording and reporting accidents pertaining to:

(1) The human, vehicular, and highway causative factors in individual accidents.

(2) The human, vehicular, and highway causative factors of injuries and deaths, including failure to use safety belts.

(3) The efficiency of the postaccident response.

E. Procedures for recognizing and reporting, to the appropriate agencies hazardous highway defects and conditions, including:

(1) Condition of drivers;

(2) Operational condition of motor vehicles;

(3) Defective signs, signals, controls, construction and maintenance deficiencies.

a. Data listed in (3) above shall be readily available to the public.

F. Appropriate agreements by the State and its political subdivisions regarding primary responsibility and authority for police traffic supervision, and cooperative responsibilities where concurrent jurisdictional boundaries and problems exist, and appropriate partici-

pation of each law enforcement agency in the comprehensive highway safety program of the State and its political subdivisions.

II. The programs shall be periodically evaluated by the State, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

III. Nothing in this standard shall preclude the use of personnel other than police officers in carrying out the minimum requirements in accordance with laws and policies established by State and/or local governments.

HIGHWAY SAFETY PROGRAM STANDARD No. 16

DEBRIS HAZARD CONTROL AND CLEANUP

Each State in cooperation with its political subdivisions shall have a program which provides for rapid, orderly, and safe removal from the roadway of wreckage, spillage, and debris resulting from motor vehicle accidents, and for otherwise reducing the likelihood of secondary and chain-reaction collisions, and conditions hazardous to the public health and safety.

I. The program shall provide as a minimum that:

A. Operational procedures are established and implemented for:

(1) Enabling rescue and salvage equipment personnel to get to the scene of accidents rapidly and to operate effectively on arrival:

a. On heavily traveled freeways and other limited access roads;

b. In other types of locations where wreckage or spillage of hazardous materials on or adjacent to highways endangers the public health and safety;

(2) Extricating trapped persons from wreckage with reasonable care—both to avoid injury or aggravating existing injuries;

(3) Warning approaching drivers and detouring them with reasonable care past hazardous wreckage or spillage;

(4) Safe handling of spillage or potential spillage of materials that are:

a. Radioactive

b. Flammable

c. Poisonous

d. Explosive

e. Otherwise hazardous.

(5) Removing wreckage or spillage from roadways or otherwise causing the resumption of safe, orderly traffic flow.

B. Adequate numbers of rescue and salvage personnel are properly trained

and retrained in the latest accident cleanup techniques.

C. A communications system is provided, adequately equipped and manned, to provide coordinated effort in incident detection, and the notification, dispatch, and response of appropriate services.

II. The program shall be periodically evaluated by the State, and the National Highway Traffic Safety Administration shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD No. 17

PUPIL TRANSPORTATION SAFETY

I. *Scope.* This standard establishes minimum requirements for a State highway safety program for pupil transportation safety; including the identification, operation, and maintenance of schoolbuses; training of personnel; and administration.

II. *Purpose.* The purpose of this standard is to reduce, to the greatest extent possible, the danger of death or injury to schoolchildren while they are being transported to and from school.

III. *Definitions.* "Type I school vehicle" means any motor vehicle with motive power, except a trailer, used to carry more than 16 pupils to and from school. This definition includes vehicles that are at any time used to carry schoolchildren and school personnel exclusively, and does not include vehicles that only carry schoolchildren along with other passengers as part of the operations of a common carrier.

"Type II school vehicle" means any motor vehicle used to carry 16 or less pupils to or from school. This does not include private motor vehicles used to carry members of the owner's household.

IV. *Requirements.* Each State, in cooperation with its school districts and its political subdivisions, shall have a comprehensive pupil transportation safety program to assure that school vehicles are operated and maintained so as to achieve the highest possible level of safety.

A. *Administration.* 1. There shall be a single State agency having primary administrative responsibility for pupil transportation, and employing at least one full-time professional to carry out its responsibilities for pupil transportation.

2. The responsible State agency shall develop an operating system for collecting and reporting information needed to

improve the safety of school vehicle operations, in accordance with Safety Program Standard No. 10, "Traffic Records," § 204.4.

B. Identification and equipment of school vehicles. Each State shall establish and maintain compliance with the following requirements for identification and equipment of school vehicles. The use of stop arms is at the option of the State.

1. Type I school vehicles shall:

a. Be identified with the words, "School Bus," printed in letters not less than 8 inches high, located between the warning signal lamps as high as possible without impairing visibility of the lettering from both front and rear, and have no other lettering on the front or rear of the vehicle;

b. Be painted National School Bus Glossy Yellow, in accordance with the colorimetric specification of Federal Standard No. 595a, Color 13432, except that the hood shall be either that color or lusterless black, matching Federal Standard No. 595a, Color 37038;

c. Have bumpers of glossy black, matching Federal Standard No. 595a, Color 17038; unless, for increased night visibility, they are covered with a retro-reflective material.

d. Be equipped with a system of signal lamps that conforms to the schoolbus requirements of Federal Motor Vehicle Safety Standard 108, 49 CFR 571.21; and

e. Have a system of mirrors that will give the seated driver a view of the roadway to each side of the bus, and of the area immediately in front of the front bumper, in accordance with the following procedure:

When a rod, 30 inches long, is placed upright on the ground at any point along a traverse line 1 foot forward of the forwardmost point of a schoolbus, and extending the width of the bus, at least 7½ inches of the length of the rod shall be visible to the driver, either by direct view or by means of an indirect visibility system.

2. Type I school vehicles that are operated by a privately or publicly owned local transit system, and used for regular common carrier transit route service as well as special school route service, shall meet all of the requirements of this standard, except as follows:

a. Such vehicles need not be painted yellow and black as required by paragraphs 1(b) and 1(c) of this section.

b. In lieu of the requirements of paragraph 1(a) of this section, such vehicles shall, while transporting children to and from school, be equipped with temporary signs, located conspicuously on the front and back of the vehicle. The sign on the front shall have the words "School Bus" printed in black letters not less than 6 in high, on a background of national school bus glossy yellow, as specified in paragraph 1(b) of this section. The sign on the rear shall be at least 10 ft' in size and shall be painted national school bus glossy yellow, as specified in paragraph 1(b) of this section, and have the words "School Bus" printed in black letters not less than 8 in high. Both the 6-in and 8-in letters shall be Series "D" as specified in the Standard Alphabets—Federal Highway Administration, 1966.

c. Where such vehicles are used only in places where use of warning signal lamps is prohibited, they need not be equipped with the signal lamps required by paragraph 1(d) of this section.

3. Any school vehicle meeting the identification requirements of 1.a-d above that is permanently converted for use wholly for purposes other than transporting pupils to or from school shall be painted a color other than National School Bus Glossy Yellow, and shall have the stop arms, and equipment required by section IV.B.1.d, removed.

4. Type I school vehicles being operated on a public highway and transporting primarily passengers other than school pupils shall have the words, "School Bus," covered, removed, or otherwise concealed, and the stop arms and equipment required by section IV.B.1.d shall not be operable through the usual controls.

5. a. Type II school vehicles shall either:

(1) Comply with all the requirements for Type I school vehicles; or

(2) Be of a color other than National School Bus Glossy Yellow, have none of the equipment specified in IV.B.1.d, and not have the words, "School Bus," in any location on the exterior of the vehicle, or in any interior location visible to a motorist.

b. The State shall establish conditions under which one or the other of the above two specifications for Type II vehicles shall apply.

C. Operation. Each State shall establish and maintain compliance with the following requirements for operating school vehicles:

1. *Personnel.* a. Each State shall develop a plan for selecting, training, and supervising persons whose primary duties involve transporting school pupils, in order to assure that such persons will attain a high degree of competence in, and knowledge of, their duties.

b. Every person who drives a Type I or Type II school vehicle occupied by school pupils shall, as a minimum:

(1) Have a valid State driver's license to operate such a vehicle(s);

(2) Meet all special physical, mental, and moral requirements established by the State agency having primary responsibility for pupil transportation; and

(3) Be qualified as a driver under the Motor Carrier Safety Regulations of the Federal Highway Administration 49 CFR 391, if he or his employer is subject to those regulations.

2. *Pupil instruction.* At least twice during each school year, each pupil who is transported in a school vehicle shall be instructed in safe riding practices, and participate in emergency evacuation drills.

3. *Vehicle operation.* a. Each State shall develop plans for minimizing highway use hazards to school vehicle occupants, other highway users, pedestrians, and property, including but not limited to:

(1) Careful planning and annual review of routes for safety hazards;

(2) Planning routes to assure maximum use of buses, and avoid standees;

(3) Providing loading and unloading zones off the main traveled part of highways, wherever it is practicable to do so;

(4) Establishing restricted loading and unloading areas for schoolbuses at, or near schools;

(5) Requiring the driver of a vehicle meeting or overtaking a schoolbus that is stopped on a highway to take on or discharge pupils, and on which the red warning signals specified in IV.B.1.d are in operation, to stop his vehicle before it reaches the schoolbus and not proceed until the warning signals are deactivated; and

(6) Prohibiting, by legislation or regulation, operation of any vehicle displaying the words, "School Bus," unless it meets the equipment and identification requirements of this standard.

b. Use of flashing warning signal lamps while loading or unloading pupils shall be at the option of the State. Use of

red warning signal lamps for any other purpose, and at any time other than when the school vehicle is stopped to load or discharge passengers shall be prohibited.

c. When vehicles are equipped with stop arms, such devices shall be operated only in conjunction with red signal lamps.

d. *Seating.* (1) Seating shall be provided that will permit each occupant to sit in a seat in a plan view lateral location, intended by the manufacturers to provide seating accommodation for a person at least as large as a 5th percentile adult female, as defined in 49 CFR 571.3.

(2) Bus routing and seating plans shall be coordinated so as to eliminate standees when a school vehicle is in motion.

(3) There shall be no auxiliary seating accommodations such as temporary or folding jump seats in school vehicles.

(4) Drivers of school vehicles equipped with lap belts shall be required to wear them whenever the vehicle is in motion.

(5) Passengers in Type II school vehicles equipped with lap belts shall be required to wear them whenever the vehicle is in motion.

D. *Vehicle maintenance.* Each State shall establish and maintain compliance with the following requirements for vehicle maintenance:

1. School vehicles shall be maintained in safe operating conditions through a systematic preventive maintenance program.

2. All school vehicles shall be inspected at least semiannually, in accordance with Highway Safety Program Manual Vol. 1, published by the Department of Transportation January 1969. School vehicles subject to the Motor Carrier Safety Regulations of the Federal Highway Administration shall be inspected and maintained in accordance with those regulations (49 CFR Parts 393 and 396).

3. School vehicle drivers shall be required to perform daily pretrip inspections of their vehicles, and to report promptly and in writing any defects or deficiencies discovered that may affect the safety of the vehicle's operation or result in its mechanical breakdown. Pretrip inspection and condition reports for school vehicles subject to the Motor Carrier Safety Regulations of the Federal Highway Administration shall be performed in accordance with those regulations (49 CFR 392.7, 392.8, and 396.7).

V. Program evaluation. The pupil transportation safety program shall be evaluated at least annually by the State agency having primary administrative responsibility for pupil transportation. The National Highway Traffic Safety Administration shall be furnished a summary of each evaluation.

SUMMARY OF COMMENTS AND RECOMMENDATIONS MADE BY THE NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE ON THE PUPIL TRANSPORTATION SAFETY STANDARD

As required by statute, the National Highway Safety Advisory Committee reviewed the draft Pupil Transportation Safety Standard and made comments and recommendations to the Secretary of Transportation in May and November 1970, summarized as follows:

1. The Committee recommended that the standard be issued initially to cover "pupil transportation safety" but that the standard should be expanded in the future to cover all youth transportation not under the jurisdiction of the Department of Transportation's Bureau of Motor Carrier Safety.

2. The Committee favored a "no standee" provision.

3. The Committee supported the uniform warning system for schoolbuses but recommended that warning systems (flashing lights) to control traffic should not be limited to larger buses (Type I vehicles).

4. To allow the use of highly reflective colors to ward off excessive solar radiation, the Committee recommended that schoolbus roofs be permitted to be some color other than schoolbus yellow. The Committee also recommended the deletion of the provision requiring bumpers to be painted "glossy black" to allow the use of rubber or other innovative bumper devices not susceptible to being painted.

5. Because of the inadequate and incompatible seat and body structure designs of schoolbuses, the Committee approved the omission of seat belts for passengers. The Committee also recommended that passengers in Type II vehicles be required to use belts only if so equipped.

6. The Committee recommended that monitors or proctors be required on each schoolbus to aid in loading and unloading the bus and to free the driver from tending the passengers while driving.

7. The Committee favored a provision in the standard calling for the periodic

reevaluation or requalification of schoolbus drivers.

8. To allow States more flexibility in vehicle inspection programs, the Committee recommended that schoolbuses be inspected "periodically" rather than "semiannually."

[37 FR 9212, May 6, 1972, as amended at 38 FR 12401, May 11, 1973]

**HIGHWAY SAFETY PROGRAM STANDARD
No. 18**

ACCIDENT INVESTIGATION AND REPORTING

I. Scope. This standard establishes minimum requirements for a State highway safety program for accident investigation and reporting.

II. Purpose. The purpose of this standard is to establish a uniform, comprehensive motor vehicle traffic accident investigation program for gathering information—who, what, when, where, why, and how—on motor vehicle traffic accidents and associated deaths, injuries, and property damage; and entering the information into the traffic records system for use in planning, evaluating, and furthering highway safety program goals.

III. Definitions. For the purpose of this standard the following definitions apply:

Accident—an unintended event resulting in injury or damage, involving one or more motor vehicles on a highway that is publicly maintained and open to the public for vehicular travel.

Highway—the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Motor vehicle—any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

IV. Requirements. Each State, in cooperation with its political subdivisions, shall have an accident investigation program meeting the requirements established herein.

A. Administration. 1. There shall be a State agency having primary responsibility for administration and supervision of storing and processing accident information, and providing information needed by user agencies.

2. There shall be employed at all levels of government adequate numbers of personnel, properly trained and qualified, to conduct accident investigations and process the resulting information.

3. Nothing in this standard shall preclude the use of personnel other than police officers, in carrying out the requirements of this standard in accordance with laws and policies established by State and/or local governments.

4. Procedures shall be established to assure coordination, cooperation, and exchange of information among local, State, and Federal agencies having responsibility for the investigation of accidents and subsequent processing of resulting data.

5. Each State shall establish procedures for entering accident information into the statewide traffic records system established pursuant to Highway Safety Program Standard No. 10, Traffic Records, and for assuring uniformity and compatibility of this data with the requirements of the system, including as a minimum:

a. Use of uniform definitions and classifications acceptable to the National Highway Traffic Safety Administration and identified in the Highway Safety Program Manual.

b. A standard format for input of data into the statewide traffic records system.

c. Entry into the statewide traffic records system of information gathered and submitted to the responsible State agency.

B. *Accident reporting.* Each State shall establish procedures which require the reporting of accidents to the responsible State agency within a reasonable time after occurrence.

C. *Owner and driver reports.* 1. In accidents involving only property damage, where the vehicle can be normally and safely driven away from the scene, the drivers or owners of vehicles involved shall be required to submit a written report consistent with State reporting requirements, to the responsible State agency. A vehicle shall be considered capable of being normally and safely driven if it does not require towing and can be operated under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway. Each report so submitted shall include, as a minimum, the following information relating to the accident:

a. Location.

b. Time.

c. Identification of driver(s).

d. Identification of pedestrian(s), passenger(s), or pedal-cyclist(s).

e. Identification of vehicle(s).

f. Direction of travel of each unit.

g. Other property involved.

h. Environmental conditions existing at the time of the accident.

1. A narrative description of the events and circumstances leading up to the time of impact, and immediately after impact.

2. In all other accidents, the drivers or owners of motor vehicles involved shall be required to immediately notify the police of the jurisdiction in which the accident occurred. This includes, but is not limited to accidents involving: (1) Fatal or nonfatal personal injury, or (2) damage to the extent that any motor vehicle involved cannot be driven under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway, and therefore requires towing.

D. *Accident investigation.* Each State shall establish a plan for accident investigation and reporting which shall meet the following criteria:

1. Police investigation shall be conducted of all accidents as identified in section IV.C.2 above. Information gathered shall be consistent with the police mission of detecting and apprehending law violators, and shall include, as a minimum, the following:

a. Violation(s), if any occurred, cited by section and subsection, numbers and titles of the State code, that (1) contributed to the accident where the investigating officer has reason to believe that violations were committed regardless of whether the officer has sufficient evidence to prove the violation(s); and (2) for which the driver was arrested or cited.

b. Information necessary to prove each of the elements of the offense(s) for which the driver was arrested or cited.

c. Information, collected in accordance with the program established under Highway Safety Program Standard No. 15, Police Traffic Services, section I-D, relating to human, vehicular, and highway factors causing individual accidents, injuries, and deaths, including failure to use safety belts.

2. Accident investigation terms shall be established, representing different interest areas, such as police; traffic; highway and automotive engineering; medical, behavioral, and social sciences. Data gathered by each member of the investigation team should be consistent with the mission of the member's agency, and

should be for the purpose of determining probable causes of accidents, injuries, and deaths. These teams shall conduct investigations of an appropriate sampling of accidents in which there were one or more of the following conditions:

a. Locations that have a similarity of design, traffic engineering characteristics, or environmental conditions, and that have a significantly large or disproportionate number of accidents.

b. Motor vehicles or motor vehicle parts that are involved in a significantly large or disproportionate number of accidents or injury-producing accidents.

c. Drivers, pedestrians, and vehicle occupants of a particular age, sex, or other grouping, who are involved in a significantly large or disproportionate number of motor vehicle traffic accidents or injuries.

d. Accidents in which causation or the resulting injuries and property damage are not readily explainable in terms of conditions or circumstances that prevailed.

e. Other factors that concern State and national emphasis programs.

V. *Evaluation.* The program shall be evaluated at least annually by the State. Substance of the evaluation report shall be guided by Chapter V of the Highway Safety Program Manual. The National Highway Traffic Safety Administration shall be provided with a copy of the evaluation report.

Summary of comments and recommendations made by the National Highway Safety Advisory Committee on the Accident Investigation and Reporting Standard. As required by statute, the National Highway Safety Advisory Committee reviewed the Accident Investigation and Reporting Standard and made comments and recommendations to the Secretary of Transportation in May and November 1970, summarized as follows:

1. The Committee endorsed the Accident Investigation and Reporting Standard, as proposed in the final draft, but strongly urged that many details be deleted from the standard and be published instead in the accompanying program manual;

2. The Committee was concerned with the practical problems associated with the mandatory reporting of all accidents, but recommended, after considerable debate, that all accidents should be reported. The Committee stressed that the quantity of information to be reported should be markedly reduced and that the

details of reportable data should be covered in the accompanying program manual and not in the standard;

3. Although the Committee supported the standard as proposed, there was minority dissent from the Committee's endorsement of the final standard, as follows: Objection to the provision requiring citizen reporting of all crashes without a specific dollar threshold; objection to the requirement that accidents be reported to a single State agency; and a suggestion that the Accident Investigation and Reporting Standard be merged with existing standards rather than issued as a new standard. In support of the Committee's position, other members indicated the desirability of having a nationally uniform accident reporting system; that experience with citizen reporting of crashes has already proved satisfactory in many States; that a specific "dollar limit" in citizen reporting of crashes is too subjective for use as a uniform threshold; and that the public will probably accept the responsibility of reporting crashes to a State agency.

PART 1206—RULES OF PROCEDURE FOR INVOKING SANCTIONS UNDER THE HIGHWAY SAFETY ACT OF 1966

Sec.	
1206.1	Scope.
1206.2	Purpose.
1206.3	Definitions.
1206.4	Sanctions.
1206.5	Commencement of proceedings.
1206.6	Contents of notice of proposed recommended determination.
1206.7	Hearing officers.
1206.8	Prehearing conference.
1206.9	Consent determination.
1206.10	Hearing.
1206.11	Recommended determination.
1206.12	Final determination.

AUTHORITY: (23 U.S.C. 116, 315, 402).

SOURCE: 39 FR 19206, May 31, 1974, unless otherwise noted.

§ 1206.1 Scope.

This part establishes procedures governing determinations to invoke the sanctions applicable to any State that does not comply with the highway safety program requirements in the Highway Safety Act of 1966, as amended (23 U.S.C. 402), and highway safety program standards issued thereunder.

§ 1206.2 Purpose.

The purpose of this part is to prescribe procedures for determining whether and the extent to which the 23 U.S.C. 402

sanctions should be invoked, and to ensure a full airing of views on the issues relevant to such determinations by affording the affected State and all other interested persons an opportunity to participate in a public hearing.

§ 1206.3 Definitions.

As used in this part:

(a) "Administrators" means the Administrators of the Federal Highway Administration and the National Highway Traffic Safety Administration.

(b) "Affected State" means the State with respect to which a proposed recommended determination has been made pursuant to this part.

(c) "Highway safety program" means a State program consisting of both (1) a Comprehensive Highway Safety Plan, a multi-year plan of the State and its political subdivisions for implementing the highway safety program standards and (2) an Annual Highway Safety Work Program, a program detailing the activities and proposed expenditures of the State and its political subdivisions for implementing selected components of the State's Comprehensive Highway Safety Plan during a single year.

(d) "Highway safety program standards" means the standards in § 1204.4 of this chapter, issued under 23 U.S.C. 402, for State highway safety programs.

(e) "Implementing" includes, but is not limited to, complying with conditions upon which the Secretary has granted approval for a State's highway safety program.

(f) "Secretary" means the Secretary of Transportation.

§ 1206.4 Sanctions.

(a) (1) Except as provided in paragraph (a) (2) of this section, the Secretary withholds all of a State's Federal highway safety funds and 10 percent of its Federal-aid highway funds that would otherwise have been apportioned to the State under 23 U.S.C. 402 and 104, respectively, and withholds approval of further highway safety programs in the State, if he finally determines pursuant to this part that a State—

(A) Does not have a highway safety program approved by him in accordance with 23 U.S.C. 402; or

(B) Is not implementing such an approved program.

(2) The Secretary may suspend, for such periods as he deems necessary, the

application to a State of the provision in 23 U.S.C. 402 regarding the withholding of funds apportioned under 23 U.S.C. 104, if he determines that such suspension is in the public interest.

(3) When the Secretary withholds funds and program approval from a State pursuant to paragraph (a) (1) of this section, he continues doing so until the State has an approved program or is implementing an approved program to his satisfaction, as appropriate.

(b) (1) The Governor of each State shall implement, or cause to be implemented, a highway safety program approved by the Secretary pursuant to 23 U.S.C. 402. If the Governor lacks legal authority to implement such program or part thereof, he shall enter into formal agreements for its implementation with appropriate officials of the appropriate State agency, political subdivision, or other governmental instrumentality. However, the existence of such agreement does not relieve the Governor of his responsibility for implementation of the entire highway safety program.

(2) If the Secretary finally determines pursuant to this part that a State has failed to comply with the Federal laws or regulations with respect to its highway safety program, or has failed to implement a highway safety program approved by him pursuant to 23 U.S.C. 402, he may withhold payment to the State on account of (i) the State's current annual highway safety work program, with respect to obligations incurred after the date of the Secretary's determination or a date established in such determination, whichever is later, and (ii) the State's subsequent annual highway safety work programs, and may also withhold approval of further highway safety programs of the State, until the State complies or takes remedial action to the satisfaction of the Secretary, as appropriate.

§ 1206.5 Commencement of proceedings.

(a) The Administrators initiate the proceedings pursuant to this part by making a proposed recommended determination to invoke the sanctions specified in § 1206.4.

(b) The Administrators send the Governor of the affected State by certified mail and publish in the *FEDERAL REGISTER* a notice of the proposed recommended determination.

§ 1206.6 Contents of notice of proposed recommended determination.

The notice of proposed recommended determination includes—

(a) A statement of the reasons for the proposed action, including the specific highway safety program deficiencies upon which the proposed recommended determination is based; and

(b) The time, date, and place for a hearing at which the affected State and any interested person may present evidence and oral and written views, or both, concerning the specified deficiencies. Hearings are held in Washington, D.C., at the headquarters of the Department of Transportation.

§ 1206.7 Hearing officers.

(a) A three-member hearing board is established consisting of an Office of the Secretary official appointed by the Secretary, a Federal Highway Administration official appointed by the Administrator of that Administration, and a National Highway Traffic Safety Administration official appointed by the Administrator of that Administration. The official from the Office of the Secretary serves as presiding officer. The appointment of the hearing board is announced in a notice published in the FEDERAL REGISTER by the presiding officer. A copy of the notice is sent to the Governor of the affected State by certified mail.

(b) The presiding officer has power to take any action and to make all necessary rules and regulations to govern the conduct of the hearing. His powers include the following:

(1) Changing the date and time of the hearing upon reasonable notice to the affected State and other hearing participants and publication of such change in the FEDERAL REGISTER;

(2) Continuing the hearing in whole or in part;

(3) Regulating the course of the hearing and the conduct of the participants and counsel therein;

(4) Examining witnesses; and

(5) Taking any other action authorized by this part.

§ 1206.8 Prehearing conference.

(a) At any time before the hearing begins, the presiding officer, on his own initiative or at the written request of the Governor of the affected State, may,

after publication of a notice in the FEDERAL REGISTER giving notice to interested persons, convene a public prehearing conference to consider the following:

(1) Simplification and clarification of the issues;

(2) Stipulations as to the facts, and contents and authenticity of documents;

(3) Disclosure of the names and addresses of witnesses and provision of documents intended to be offered in evidence; or

(4) Any other matter that will tend to simplify the issues or expedite the proceedings.

§ 1206.9 Consent determination.

At any time prior to the commencement of the hearing, the affected State and the Administrators may execute an appropriate agreement for disposing of the matter, on which the proposed recommended determination is based, by mutual consent for the consideration of the Secretary. The agreement is submitted to the Secretary, who may—

(a) Accept it and publish a notice in the FEDERAL REGISTER setting forth its terms;

(b) Reject it and direct that the proceedings in the matter continue; or

(c) Take such other action as he deems appropriate.

§ 1206.10 Hearing.

(a) Hearings held pursuant to this part are informal, legislative-type hearings and are open to the public.

(b) The affected State and any interested person participating in a hearing conducted pursuant to this part may, except as specified by the presiding officer pursuant to § 1206.7(b)—

(1) Appear by counsel or other authorized representative;

(2) Present evidence orally or by documents; and

(3) Present oral or written argument.

(c) The hearing is stenographically transcribed verbatim and reported by an official reporter designated by the presiding officer.

(d) As soon as practicable after the presiding officer receives the official transcript of the hearing, exhibits, and other documents filed at the hearing, he forwards them to the Administrators.

§ 1206.11 Recommended determination.

As soon as practicable, the Administrators review the materials forwarded

to them by the presiding officer, any pre-hearing conference notices, and the evidence of the Administrations regarding the affected State's program deficiencies cited in the proposed recommended determination. On the basis of the review, they issue a recommended determination and submit it and the material they reviewed to the Secretary.

§ 1206.12 Final determination.

(a) As soon as practicable, the Secretary reviews the recommended determination and the material forwarded him by the Administrators. On the basis of the review, the Secretary may adopt or reject the recommended determination, in whole or in part. The Secretary then issues a final determination which includes:

(1) His decision, and reasons therefor, on the question of whether and to what extent the sanctions provided in § 1206.4 will be invoked; and

(2) A specification of the funds and program approval, if any, to be withheld.

(b) A copy of the final determination is sent by certified mail to the Governor of the affected State and to each other hearing participant, and is published in the FEDERAL REGISTER.

PART 1213—INCENTIVE GRANT CRITERIA FOR STATE SAFETY BELT USE LAWS

Sec.

- 1213.1 Scope.
- 1213.2 Purpose.
- 1213.3 Definitions.
- 1213.4 General requirements.
- 1213.5 Requirements for 10 percent incentive grant.
- 1213.6 Requirements for 15 percent incentive grant.
- 1213.7 Requirements for 25 percent incentive grant.
- 1213.8 Exemptions.
- 1213.9 Penalties.
- 1213.10 Effective date of safety belt use requirements.

AUTHORITY: Sec. 219, Pub. L. 93-87, 87 Stat. 290, (23 U.S.C. 402(j)); and delegation of authority at 49 CFR 1.51.

SOURCE: 39 FR 13157, Apr. 11, 1974, unless otherwise noted.

§ 1213.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 402(j), for awarding incentive grants to States that enact laws requiring the use of safety belts in motor vehicles.

§ 1213.2 Purpose.

The purpose of this part is to encourage States to enact safety belt use laws that will significantly reduce highway deaths and injuries and resultant societal costs. The criteria established are intended to ensure that the State safety belt use laws for which incentive grants are awarded meet or exceed minimum levels of life saving and injury preventing potential.

§ 1213.3 Definitions.

(a) "Available" means, with respect to safety belts, a safety belt that is installed in a motor vehicle, but not fastened around the front of any occupant's body.

(b) "Highway" means the entire width between the boundary lines of every publicly-maintained way when any part thereof is open to the use of the public for the purpose of travel by motor vehicle.

(c) "Motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

(d) "Operate" means to occupy the driver's seating position of a vehicle while it is moving forward or backward, stopped in traffic, or standing with engine running. It also includes the interval between the time that an officer signals a driver to pull his vehicle over to the curb or shoulder and the time that the officer requests the stopped driver to show his identification or to exit from his vehicle.

(e) "Safety belt" means a lap belt, shoulder belt, or any other belt or combinations of belts designed to be installed in motor vehicles to restrain drivers and passengers during motor vehicle crashes. It also includes anchorages, buckles, and all other equipment necessary for the installation and use of safety belts.

(f) "Seating position" means any motor vehicle location intended by the vehicle manufacturer to provide seating accommodation while the vehicle is in motion, except auxiliary seating accommodations such as temporary or folding jump seats.

§ 1213.4 General requirements.

To qualify for incentive grants of 10, 15, or 25 percent of its apportionment of highway safety funds under 23 U.S.C. 402, a State must enact a safety belt use law that meets the requirements of §§ 1213.5.

1213.6, or 1213.7, as applicable, and of §§ 1213.8 through 1213.10. Qualifying States will receive an incentive grant for the fiscal year of enactment and for each subsequent fiscal year through fiscal year 1976. The amount of the grants for any such fiscal year will be determined by the requirements specified in this part.

§ 1213.5 Requirements for 10 percent incentive grant.

To qualify for an incentive grant of 10 percent of its 23 U.S.C. 402 apportionment, a State must have a law that includes provisions to the following effect:

(a) No person shall operate any motor vehicle on the highways of the State unless each of its seating positions is equipped with the same number of safety belts with which it was required by Federal law or regulation to be equipped at the time of the vehicle's manufacture and all of the safety belts with which it is required by State law or regulation to be equipped.

(b) No person shall wholly or partially remove or disconnect any safety belt that was required by Federal law or regulation to be installed in a motor vehicle at the time of the vehicle's manufacture, or that is required by State law or regulation to be installed in a vehicle, except temporarily for cleaning, repair, or replacement with equivalent or improved safety belts.

(c) No person shall operate on the highways of the State any motor vehicle whose driver's seating position is equipped with a lap safety belt, unless he has fastened such lap safety belt around the front of his body.

(d) No person 4 years of age or older and 40 pounds or more in weight shall ride as a passenger on the highways of the State in the front seat of any motor vehicle in which there is a front passenger seating position with an available lap safety belt, unless he has fastened a lap safety belt around the front of his body.

§ 1213.6 Requirements for 15 percent incentive grant.

To qualify for an incentive grant of 15 percent of its 23 U.S.C. 402 apportionment, a State must have a law that includes provisions to the effect of § 1213.5 (a) through (c). In addition, it shall include a provision to the following effect:

(a) No person 4 years of age or older and 40 pounds or more in weight shall ride as a passenger on the highways of the State in any motor vehicle in which

there is a passenger seating position with an available lap safety belt, unless he has fastened a lap safety belt around the front of his body.

§ 1213.7 Requirements for 25 percent incentive grant.

To qualify for an incentive grant of 25 percent of its 23 U.S.C. 402 apportionment, a State must have a law that includes provisions to the effect of § 1213.5 (a) and (b). In addition, it shall include provisions to the following effect:

(a) No person shall operate on the highways of the State any motor vehicle whose driver's seating position is equipped with a lap safety belt or lap and shoulder safety belts, unless he has fastened all such safety belts around the front of his body.

(b) No person 4 years of age or older and 40 pounds or more in weight, but less than 12 years of age or 55 inches in height, shall ride as a passenger on the highways of the State in any motor vehicle in which there is a passenger seating position with an available lap safety belt unless he has fastened a lap safety belt around the front of his body.

(c) No person 12 years of age or older and 55 inches in height or taller shall ride as a passenger on the highways of the State in any motor vehicle in which there is a passenger seating position with an available lap safety belt or lap and shoulder safety belts, unless he has fastened around the front of his body all of the safety belts of a passenger seating position equipped with one or more safety belts.

§ 1213.8 Exemptions.

To qualify for an incentive grant, a State must have a safety belt use law that provides that the State shall exempt any person or class of persons, upon their application or the State's own initiative, from the safety belt use requirements in §§ 1213.5, 1213.6, or 1213.7, as applicable, if they;

(a) Possess a written statement from a qualified physician or psychiatrist, as appropriate, that they have a physical or mental problem that has been determined by State law or regulation to make their safety belt use unreasonable because the problem substantially outweighs the safety and economic benefits of their safety belt use; or

(b) Are engaged in necessary occupational activities that have been deter-

mined by State law or regulation to be hampered unreasonably by safety belt use.

§ 1213.9 Penalties.

A State safety belt use law shall provide that:

(a) Any person who violates any safety belt installation or maintenance requirement of § 1213.5 (a) or (b) shall be punishable by fine of not less than \$10.00; and

(b) Any person who violates any safety belt use requirements in § 1213.5 (c) and (d), 1213.6(a), or 1213.7 (a) through (c) shall be fined not less than \$10.00 and not more than \$35.00.

§ 1213.10 Effective date of safety belt use requirements.

(a) To qualify for an incentive grant in the fiscal year of enactment, a State must—

(1) Establish an effective date for its safety belt use law of not later than 6 months after the law's enactment; or

(2) Establish an effective date for its law of not later than 12 months after enactment and demonstrate that the interval of greater than 6 months between the enactment and effective dates is necessary to permit completion of activities essential to the implementation of the law.

(b) A State will receive its first incentive grant for the fiscal year following the fiscal year of enactment of its safety belt use law or for the fiscal year that the law becomes effective, whichever is later, if the interval between the enactment and effective dates is greater than 6 months, but not greater than 12 months, and the State cannot demonstrate its necessity or if the interval is greater than 12 months.

PART 1214—INCENTIVE GRANT CRITERIA FOR REDUCTION OF STATE ANNUAL HIGHWAY FATALITY RATES

Sec.

1214.1 Scope.

1214.2 Purpose.

1214.3 Definitions.

1214.4 Award procedures.

1214.5 Eligibility requirements.

1214.6 Ranking of the eligible States.

1214.7 Calculation of a State's vehicle miles of travel, fatalities, and fatality rate.

Sec.

1214.8 Calculation of the national vehicle miles of travel, fatalities, and fatality rate.

AUTHORITY: Sec. 219, Pub. L. 93-87, 87 Stat. 290, 23 U.S.C. 402(j); and delegation of authority at 49 CFR 1.48 and 1.51.

SOURCE: 40 FR 11871, Mar. 14, 1975, unless otherwise noted.

§ 1214.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 402(j) (2), for the awarding of incentive grants to States that make the most significant progress in reducing their annual highway fatality rates.

§ 1214.2 Purpose.

The purpose of this part is to encourage the States to develop and implement effective measures for reducing their highway fatalities.

§ 1214.3 Definitions.

(a) "Base calendar year" means the calendar year immediately and fully preceding a fiscal year for which grants are made under this part.

(b) "Fatality rate reduction" means a decrease in the fatality rate for the base calendar year relative to the fatality rate for the 4 preceding calendar years.

§ 1214.4 Award procedures.

For each fiscal year, beginning with fiscal year 1975, for which funds are authorized for implementation of 23 U.S.C. 402(j) (2), grants of 25 percent of a State's apportionment of highway safety funds under 23 U.S.C. 402 will be made to the States eligible under § 1214.5 in the order of their ranking pursuant to § 1214.6. Such grants will be made until all eligible States have received a grant or until there are insufficient funds to award a 25 percent grant to the State with the next highest ranking. That State will be granted the balance of the funds.

§ 1214.5 Eligibility requirements.

To be eligible for an incentive grant under this part, a State shall satisfy the requirements specified in paragraph (a) of this section and, if there is a national fatality rate reduction, either paragraph (b) or paragraph (c), of this section. Calculations of vehicle miles of travel, fatalities, and fatality rate will be made

as specified in §§ 1214.7 and 1214.8. An eligible State shall—

(a) Have a fatality rate reduction; and, if there is a national fatality rate reduction, either

(b) Have a fatality rate for the base calendar year not greater than one-half the national fatality rate for such year; or

(c) Have a fatality rate reduction of a percentage not less than 10 percent greater than that of the national fatality rate reduction.

§ 1214.6 Ranking of the eligible States.

(a) When there is no national fatality rate reduction—

(1) The States that satisfy § 1214.5 (a) and (b) will be initially ranked in ascending order of their fatality rates for the base calendar year.

(2) After the ranking specified in paragraph (a) (1) of this section is completed, the States that satisfy § 1214.5 (a), but not (b), will be appended to the ranking in descending order of their fatality rate reductions.

(b) When there is a national fatality rate reduction—

(1) The States that satisfy § 1214.5 (a) and (b) will be initially ranked in ascending order of their fatality rates for the base calendar year.

(2) After the ranking specified in paragraph (b) (1) of this section is completed, the States that satisfy § 1214.5 (a) and (c), but not (b), will be appended to the ranking in descending order of their fatality rate reductions.

§ 1214.7 Calculation of a State's vehicle miles of travel, fatalities, and fatality rate.

A State's vehicle miles of travel, fatalities, and fatality rate will be calculated in accordance with the following procedures.

(a) Calculate the State's vehicle miles of travel and determine its highway fatalities for the base calendar year and for each of the 4 preceding calendar years using the data submitted by the State, as of the October 1 immediately following the base calendar year, in accordance with the latest revision of "Instructions for Reporting Highway Traffic and Accidents," issued by the Federal Highway Administration on January 26, 1968.

(b) Calculate the State's fatality rate for the base calendar year by dividing the State's highway fatalities for such year by the number of vehicle miles of travel in the State for such year and multiplying the result by 100,000,000.

(c) Calculate the State's fatality rate for the 4 preceding calendar years by dividing the sum of the State's fatalities for such years by the sum of the vehicle miles of travel in the State during such years and multiplying the result by 100,000,000.

(d) Calculate the State's fatality rate reduction percentage by dividing the reduction by the State's fatality rate for the 4 preceding calendar years and multiplying the result by 100.

§ 1214.8 Calculation of the national vehicle miles of travel, fatalities, and fatality rate.

The national vehicle miles of travel, fatalities, and fatality rate will be calculated in accordance with the procedures specified in section 1214.7, except that the vehicle miles of travel and fatality data will be those of all the States.

PART 1230—HIGHWAY SAFETY PROGRAM STANDARDS—APPLICABILITY TO FEDERALLY ADMINISTERED AREAS

Sec.

1230.1 Scope.

1230.2 Purpose.

1230.3 Applicability.

1230.4 Requirements.

AUTHORITY: 23 U.S.C. 402, 38 FR 12147, 49 CFR 1.48.

SOURCE: 38 FR 18665, July 13, 1973, unless otherwise noted.

§ 1230.1 Scope.

This part establishes requirements for implementation by Federal Departments or agencies of highway safety program standards set out in this chapter, in federally administered areas where a Federal department or agency controls highways open to public travel or supervises traffic operations.

§ 1230.2 Purpose.

The purpose of this part is to ensure that uniform standards established to regulate highway safety activities apply uniformly throughout the United States

to those highways and activities administered by a Federal agency.

§ 1230.3 Applicability.

Pursuant to 23 U.S.C. 402, the highway safety program standards set forth in this chapter are applicable to Federal departments and agencies that control highways open to public travel within federally administered areas or supervise traffic operations on such highways, to the extent that they engage in activities covered by the highway safety program standards set out in this chapter.

§ 1230.4 Requirements.

(a) Each department or agency shall implement the highway safety program standards, to the extent that they are relevant to the activities of the department or agency. Implementation activities shall include but not be limited to:

(1) In cooperation with the FHWA and NHTSA, review of the department's or agency's activities to determine which are covered by the highway safety program standards.

(2) Review of the current status of those activities with regard to the relevant requirements of the standards.

(3) Development, submission to the FHWA and NHTSA, and periodic updating and implementation of a multiyear Comprehensive Plan for highway safety in accordance with the highway safety program standards.

(b) Each department or agency shall submit annually to the Secretary of Transportation a comprehensive report on the administration of its highway safety program for the preceding calendar year. The report shall be suitable for inclusion in the report to the President for transmittal to the Congress as required by section 202(a) of the Highway Safety Act of 1966 (P.L. 89-564), and shall include but not be limited to:

(1) Thorough statistical data on fatal, injury and property damage accidents which occurred within its federally administered area.

(2) The scope of observance of applicable Federal standards.

(3) The effectiveness of its highway safety programs.

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part 6575
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25 *Redesignated as Subpart C
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305 *Redesignated as Part 642 10430
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(11) added 1428
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vised; (b) (4) added 1428
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740.56 * (a) (2) revised 1429
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770 Added 31677
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790 Added 12104
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1.10 Removed 36327
1.13 Removed 35152
1.14 Removed † 7647
1.15-1.22 Removed 35152
1.24 Removed 35152
1.26 Removed † 10951
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(Correction published April 21, 1975)

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